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Title 18. Debtor and Creditor

Title 19. Domestic Relations

Including Annotations to the Georgia Reports
and the Georgia Appeals Reports

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Main Set**

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THIS SUPPLEMENT CONTAINS

Statutes:

All laws specifically codified by the General Assembly of the State of Georgia through the 2014 Regular Session of the General Assembly.

Annotations of Judicial Decisions:

Case annotations reflecting decisions posted to LexisNexis® through March 21, 2014. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

Annotations of Attorney General Opinions:

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through March 21, 2014.

Other Annotations:

References to:

Emory Bankruptcy Developments Journal.
Emory International Law Review.
Emory Law Journal.
Georgia Journal of International and Comparative Law.
Georgia Law Review.
Georgia State University Law Review.
John Marshall Law Review.
Mercer Law Review.
Georgia State Bar Journal.
Georgia Journal of Intellectual Property Law.
American Jurisprudence, Second Edition.
American Jurisprudence, Pleading and Practice.
American Jurisprudence, Proof of Facts.
American Jurisprudence, Trials.
Corpus Juris Secundum.
Uniform Laws Annotated.
American Law Reports, First through Sixth Series.
American Law Reports, Federal.

Tables:

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2014 Regular Session of the General Assembly.

Indices:

A cumulative replacement index to laws codified in the 2014 supplement pamphlets and in the bound volumes of the Code.

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TITLE 18

DEBTOR AND CREDITOR

Chap.

2. Debtor and Creditor Relations, 18-2-1 through 18-2-81.
4. Garnishment Proceedings, 18-4-1 through 18-4-135.

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O.C.G.A. § 18-2-21 referred plaintiffs to Uniform Fraudulent Transfers Act (UFTA), O.C.G.A. § 18-2-70 et seq., or, in the case of those claims that could not be brought under UFTA, to the common law cause of action. *Wessinger v. Spivey* (In re Galbreath), 475 B.R. 749 (Bankr. S.D. Ga. 2003).

RESEARCH REFERENCES

ALR. — Purchase of annuity by debtor as fraud on creditors, 74 ALR6th 549.

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Law reviews. — For annual survey of law on business associations, see 62 Mercer L. Rev. 41 (2010).

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peal within ten days of that statement. *Akanthos Capital Mgmt., LLC v. CompuCredit Holdings Corp.*, 677 F.3d 1286 (11th Cir. 2012).

Motion for summary judgment denied. — Summary judgment motion filed by an insurer in response to a Chapter 7 trustee's complaint charging that certain premiums paid to the insurer by a debtor were fraudulent conveyances that were recoverable under 11 U.S.C.S. § 548 and/or under Georgia's Uniform Fraudulent Transfers Act, O.C.G.A. § 18-2-70 et seq., was denied because case presented significant factual issues concerning the legal relationships between debtor and the entities on behalf of which debtor had paid the premiums and the presence of such issues foreclosed summary judg-

ment. *Coleman v. Zurich Am. Ins. Co.* (In re Darrow Auto. Group, Inc.), No. 09-11228, 2011 Bankr. LEXIS 5253 (Bankr. S.D. Ga. Mar. 29, 2011).

Trial court erred by denying an insurance company's motion for summary judgment on a claim that the company engaged in a conspiracy which violated the Uniform Fraudulent Transfers Act, O.C.G.A. § 18-2-70 et seq., by a conspiracy to settle a bad faith/negligence claim possessed by an estate for less than the claim's true value because the insurer was found not to have engaged in fraudulent conduct. *Baker v. Huff*, 323 Ga. App. 357, 747 S.E.2d 1 (2013).

Transfer was not fraudulent. — When a corporation paid a dividend to a shareholder pursuant to a shareholders agreement after designating itself an S corporation, it was not a fraudulent transfer because it was not error to find that the transfer was made in exchange for reasonably equivalent value since the shareholders agreement provided the corporation with valuable benefits by virtue of its S-corporation election. *Crumpton v. McGarrity* (In re Northlake Foods, Inc.), No. 12-15604, 2013 U.S. App. LEXIS 7578 (11th Cir. Apr. 16, 2013) (Unpublished).

Fraudulent conveyance claim not stated. — Administrator failed to state a claim under the Georgia Uniform Fraud-

ulent Transfer Act, O.C.G.A. § 18-2-70 et seq., against group three when the administrator alleged that defendant one held title to the property when the suit was filed, and claimed that the administrator was entitled to recover the property from defendant one and to set aside the lien to defendant two; the administrator acknowledged that defendants three, four, and five denied any knowledge of the administrator's lien on the property when they purchased the property, and that therefore no one disclosed the lien to the closing attorney or defendants three, four, and five, despite certain parties' knowledge and affirmative duty to disclose the existence of the writ as constituting a lien on the property. *Huggins v. Powell*, 315 Ga. App. 599, 726 S.E.2d 730 (2012).

Choice of law. — In a fraudulent conveyance action transferred from the Northern District of Texas, Georgia's former fraudulent conveyance law, O.C.G.A. § 18-2-22, which was in force at the time the actions in question occurred, was the applicable state law under Texas choice of law principles because Georgia had the most significant relationship to the issues raised in the lawsuit. *MC Asset Recovery v. Southern Co.*, No. 1:06-CV-0417-BBM, 2008 U.S. Dist. LEXIS 123609 (N.D. Ga. Apr. 1, 2008).

Cited in *Bishop v. Patton*, 288 Ga. 600, 706 S.E.2d 634 (2011).

18-2-71. Definitions.

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Transfer. — Definition of a "transfer" is broad enough to encompass a co-owner's withdrawal of funds from a joint bank account. *Bishop v. Patton*, 288 Ga. 600, 706 S.E.2d 634, overruled on other grounds by *SRB Inv. Servs., LLLP v. Branch Banking & Trust Co.*, 289 Ga. 1, 709 S.E.2d 267 (2011).

Property. — Defendants' transferring of corporate goodwill, or "book of business," to another entity was transfer of property under the broad definition of property in Georgia's fraudulent transfer law. *Jones v. Tauber & Balser, P.C.*, 503 B.R. 162 (N.D. Ga. 2013).

Summary judgment improper. — Trial court erred by granting summary judgment to a creditor because under O.C.G.A. § 18-2-75(b), the questioned real estate transfer involved the debtor purchasing the property for the debtor's mother because the debtor had the right to purchase the property and it was only deeded to the debtor briefly the same day, which transfer was not to satisfy an antecedent debt, thus, no fraudulent transfer occurred. *Truelove v. Buckley*, 318 Ga. App. 207, 733 S.E.2d 499 (2012).

18-2-74. Fraudulent transfer; determination of actual intent.

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Badges of fraud identified by federal court applicable. — O.C.G.A. § 18-2-74 permits the trustee to avoid a transfer made with the actual intent to hinder, delay or defraud any creditor of the debtor. Subsection (b) states that, in determining actual intent, the court could consider a specified list of factors among other factors, which track the badges of fraud identified by the United States Court of Appeals for the Eleventh Circuit. *Scarver v. M. Abuhab Participacoes S.A.* (In re Moskowitz), No. 10-6650-WLH, 2011 Bankr. LEXIS 4800 (Bankr. N.D. Ga. Nov. 28, 2011).

Intentional fraud. — Plaintiff established prima facie case of intentional fraud sufficient to trigger Georgia's fraudulent transfer law because plaintiff provided evidence showing that transaction resulted in transfer of substantially all assets, transferring company became insolvent shortly after transfer, transfer occurred just before potential lawsuit against transferring company became known, shareholders of transferring company simply switched over to company to whom assets transferred, and some evidence existed that efforts were made to conceal nature of transfer. *Jones v. Tauber & Balser, P.C.*, 503 B.R. 162 (N.D. Ga. 2013).

Insider. — Certain individuals and entities were insiders of the debtor, including officers and persons in control of the debtor, their spouses, the owner of 66 percent of the debtor, and indirect owners of 20 percent or more of the debtor. *Watts v. MTC Dev., LLC* (In re Palisades at W. Paces Imaging Ctr., LLC), 501 B.R. 896 (Bankr. N.D. Ga. 2013).

Pleading requirements.

Chapter 7 trustee's allegations were sufficient to survive a creditor's motion to dismiss the trustee's complaint seeking to avoid and recover transfers pursuant to 11 U.S.C. §§ 544(b)(1) and 550 when the trustee alleged sufficient facts to suggest that, pursuant to O.C.G.A. § 18-2-74(b), the creditor received avoidable fraudulent transfers from the debtor. The trustee

alleged that all of the transfers were made within four years of the petition date, that the transfers were from the debtors' bank account, and that several badges of fraud indicated the debtors' actual intent to hinder, delay, or defraud including the fact that the transfers occurred when the debtors were insolvent, the creditor was an insider of the debtors at the time of the transfers, and the creditor knew or should have known that the debtors were involved in an unlawful scheme to defraud investors. *Gordon v. Graybeal* (In re CM Vaughn, LLC), No. 10-06105-MGD, 2010 Bankr. LEXIS 2547 (Bankr. N.D. Ga. June 21, 2010).

Court rejected transferees' argument that a Chapter 7 trustee could not plausibly assert the existence of a creditor with an allowed claim that gave the creditor standing under 11 U.S.C. § 544(b)(1) to assert a constructively fraudulent transfer claim under O.C.G.A. § 18-2-74 and Del. Code Ann. tit. 6, § 1304 because the assertion that only an unsecured creditor with a claim arising prior to the transfers could seek their avoidance was legally flawed. Under the state statutes, a transfer for less than reasonably equivalent value was constructively fraudulent as to creditors whose claims arose after the transfers when the debtor was engaged or was about to engage in a business or transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction. *Watson v. Powell* (In re Atlantis Plastics, Inc.), No. 10-06349, 2011 Bankr. LEXIS 1147 (Bankr. N.D. Ga. Mar. 31, 2011) (Unpublished).

When an investor asserted a fraudulent transfer claim against a bank to which a consultant who allegedly defrauded the investor made a down payment on a house, it was error to dismiss the claim based on the bank's assertion that the bank, under O.C.G.A. § 18-2-74(a)(1), took the consultant's funds in good faith and for a reasonably equivalent value because: (1) the investor's complaint did not admit or otherwise demonstrate such

an affirmative defense; and (2) the investor had no obligation to anticipate the affirmative defense. Furthermore, the claims could survive a motion to dismiss because the investor: (1) stated viable claims; (2) did not have to anticipate affirmative defenses; and (3) did not admit such defenses. *Speedway Motorsports, Inc. v. Pinnacle Bank*, 315 Ga. App. 320, 727 S.E.2d 151 (2012).

Trustee could not prevail under O.C.G.A. § 18-2-74 because the trustee was not a “creditor” who was able to utilize § 18-2-74. Here, the trustee did not plead that the trustee was moving under 11 U.S.C. § 544; rather, the trustee simply asserted a state law cause of action. *Cooper v. Bullock* (In re Bullock), No. 10-04111-MGD, 2012 Bankr. LEXIS 3268 (Bankr. N.D. Ga. June 12, 2012).

Colorable claim in bankruptcy. — When a Chapter 7 debtor failed to list a creditor’s claim, the claim was non-dischargeable under 11 U.S.C. § 523(a)(3). Pursuant to the fraudulent transfer elements of O.C.G.A. § 18-2-74, the creditor made the required showing of a colorable claim of non-dischargeability under 11 U.S.C. § 523(a)(6). *D.A.N. Joint Venture III, L.P. v. Wier* (In re Wier), No. 10-6076, 2012 Bankr. LEXIS 5064 (Bankr. N.D. Ga. Sept. 30, 2012).

Property was transferred. — Defendants’ argument that transfer of corporate goodwill, or “book of business,” could not as a matter of law constitute transfer under Georgia’s fraudulent transfer law because goodwill had no value was rejected because plaintiff produced evidence that the goodwill transferred had substantial value. *Jones v. Tauber & Balser, P.C.*, 503 B.R. 162 (N.D. Ga. 2013).

Fraudulent transfer shown. — Checks payable from a Chapter 7 debtor that were deposited in an insider’s account were avoidable as made with actual intent to defraud a creditor because the deposited checks were not fully disclosed, the debtor received no consideration for the transfer, the debtor was insolvent at the time, and the checks, and any invoices which allegedly supported them, were created in order to defraud a creditor into making advances for expenses not validly incurred. *Watts v. MTC Dev., LLC* (In re

Palisades at W. Paces Imaging Ctr., LLC), 501 B.R. 896 (Bankr. N.D. Ga. 2013).

No fraudulent transfer shown.

Chapter 7 trustee was not entitled to the recovery of property from the debtor’s property under 11 U.S.C. § 544. Under the fraudulent transfer elements of O.C.G.A. § 18-2-74, the debtor received reasonably equivalent value in exchange for the privilege of living in the property without the payment of rent, taxes, or insurance and in exchange for enjoying the benefit of property improvements. *Pettigrew v. Rollins* (In re Rollins), No. 09-6054, 2011 Bankr. LEXIS 3742 (Bankr. N.D. Ga. Sept. 29, 2011).

Distributions to the members of a limited liability company did not constitute a fraudulent transfer in violation of O.C.G.A. § 18-2-74(a) because insolvency on the part of the company and an actual intent to hinder, defraud, or delay the creditor’s collection of the creditor’s debt was not shown. *Sun Nurseries, Inc. v. Lake Erma, LLC*, 316 Ga. App. 832, 730 S.E.2d 556 (2012).

No fraudulent transfer when work performed. — Debtor’s twice monthly \$1833 payments to the defendant in exchange for regular, hotel managerial services did not constitute avoidable fraudulent transfers under O.C.G.A. §§ 18-2-74(a)(2)(B) and 18-2-75 because the defendant’s work for the debtor constituted reasonably equivalent value in exchange for the payments. *Anderson v. Patel* (In re Diplomat Constr., Inc.), No. 11-5611, 2013 Bankr. LEXIS 4297 (Bankr. N.D. Ga. Aug. 6, 2013).

Transfer before a crime was committed. — Although the transfer of a house was accompanied by some badges of fraud, the trial court abused the court’s discretion in enjoining further disposition of the house, pending adjudication of the merits of wrongful death and fraudulent transfer claims, since the transferor gave the house to the transferor’s three minor grandchildren in Florida three months before the transferor murdered the decedent. *Bishop v. Patton*, 288 Ga. 600, 706 S.E.2d 634, overruled on other grounds by *SRB Inv. Servs., LLLP v. Branch Banking & Trust Co.*, 289 Ga. 1, 709 S.E.2d 267 (2011).

Fraudulent transfer by individual accused of murder. — Court did not abuse the court's discretion in entering an interlocutory injunction barring further disposition of the proceeds from joint bank accounts pending final disposition of fraudulent transfer and wrongful death lawsuits because badges of fraud indicated an actual intent to hinder, delay, or defraud a decedent's estate and heirs of a full recovery. The transferor's adult child came up from Florida to withdraw the funds from joint bank accounts in Georgia three days after the transferor was arrested for the murder of the decedent. *Bishop v. Patton*, 288 Ga. 600, 706 S.E.2d 634, overruled on other grounds by SRB Inv. Servs., LLLP v. Branch Banking & Trust Co., 289 Ga. 1, 709 S.E.2d 267 (2011).

Fraudulent conveyance claim time-barred. — Administrator's fraudulent conveyance claims against group one were time-barred under O.C.G.A. §§ 18-2-74(a)(1) and 18-2-79(1), even though the claim was not time-barred under the limitations period in effect when the claim accrued, as application of § 18-2-79, a procedural law in effect at the time the suit was filed, did not violate the constitutional prohibition against retroactive laws under Ga. Const. 1983, Art. I, Sec. I, Para. X; the administrator also failed to utilize the one-year statute of limitation effective upon discovery of the alleged fraud. *Huggins v. Powell*, 315 Ga. App. 599, 726 S.E.2d 730 (2012).

Since an administrator's fraudulent conveyance claims were time-barred under O.C.G.A. §§ 18-2-74(a)(1) and 18-2-79(1), a limited liability company's (LLC) failure to respond to the administrator's requests for admissions was of no consequence and the trial court's denial of summary judgment to the LLC was improper. *Huggins v. Powell*, 315 Ga. App. 599, 726 S.E.2d 730 (2012).

Discovery of attorney-client communications. — Judgment creditor could inquire into attorney-client communications only as the communications were related to the planning or execution of the transition from the limited liability company (LLC) to the other entities. The creditor could not inquire into communi-

cations made after these transactions were carried out, even if those communications concern the possible legal implications of the transactions. *Tindall v. H & S Homes, LLC*, No. 5:10-cv-044(CAR), 2011 U.S. Dist. LEXIS 2299 (M.D. Ga. Jan. 10, 2011).

Crime fraud exception to attorney-client privilege triggered. — With respect to documents claimed to be protected by attorney-client privilege, because plaintiff successfully established prima facie case of intentional fraud and violation of Georgia's fraudulent transfer law, that was enough to trigger crime-fraud exception and require defendants to produce documents related to transfer at issue. *Jones v. Tauber & Balser, P.C.*, 503 B.R. 162 (N.D. Ga. 2013).

Interlocutory injunction proper. — Trial court did not abuse the court's discretion in entering an interlocutory injunction to preserve the status quo pending adjudication of the merits of the creditor's action against the debtors alleging breach of contract and fraudulent transfers because the debtors presented no evidence of harm from the creditor's delay in amending the creditor's complaint to seek an interlocutory injunction, and the delay resulted primarily from the debtors' concealment of the debtors' actions and obstruction of the creditor's efforts to discover the details; vague assertions of harm supported by no citation to evidence in the record are insufficient to sustain a defense of laches, and there is a balance between a plaintiff's knowing that a cause of action exists and that interim injunctive relief may be needed and sitting on the plaintiff's rights to the prejudice of the defendant. *SRB Inv. Servs., LLLP v. Branch Banking & Trust Co.*, 289 Ga. 1, 709 S.E.2d 267 (2011).

Trial court did not abuse the court's discretion in entering an interlocutory injunction to preserve the status quo pending adjudication of the merits of the creditor's action against the debtors alleging breach of contract and fraudulent transfers in violation of the Georgia Uniform Fraudulent Transfers Act (UFTA), O.C.G.A. § 18-2-70 et seq., because foreclosing on collateral of uncertain remaining value, going through confirmation pro-

ceedings, and suing the insolvent debtors to reclaim the deficiency and then having to recover the fraudulently transferred assets to collect on the ensuing judgment was not an adequate remedy at law since it was not nearly as practical and as efficient to the ends of justice and its prompt administration as the remedy in equity enjoining further transfers temporarily so that the creditor could collect a final judgment; when a money judgment is likely to be uncollectible because a debtor has fraudulently moved the debtor's assets in an attempt to dissipate or conceal the assets from a creditor, Georgia law, both before and under the Georgia UFTA, gives the creditor the right to seek interlocutory relief by freezing the assets where the assets are. *SRB Inv. Servs., LLLP v. Branch Banking & Trust Co.*, 289 Ga. 1, 709 S.E.2d 267 (2011).

Trial court did not abuse the court's discretion in entering an interlocutory injunction to preserve the status quo pending adjudication of the merits of the creditor's action against the debtors alleging breach of contract and fraudulent transfers in violation of the Georgia Uniform Fraudulent Transfers Act (UFTA), O.C.G.A. § 18-2-70 et seq., because at least seven statutory badges of fraud listed in the UFTA, O.C.G.A. § 18-2-74(b), were implicated, and the creditor also presented evidence as a non-statutory badge of fraud of the debtors' pattern of maintaining just enough funds in certain accounts to satisfy the debtors' financial covenants at the end of each quarter and then transferring the funds away shortly thereafter; under the UFTA, O.C.G.A. § 18-22-77(a)(3)(A), the trial court was authorized to enter an interlocutory injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property. *SRB Inv. Servs., LLLP v. Branch Banking & Trust Co.*, 289 Ga. 1, 709 S.E.2d 267 (2011).

Summary judgment improper.

Bankruptcy court denied a Chapter 7 trustee's motion for summary judgment on the trustee's claim that transfers that were made by a mortgage company to an investor were avoidable under 11 U.S.C. § 544 and the Georgia Uniform Fraudulent Transfer Act, O.C.G.A. § 18-2-74 et

seq., because a person who owned the company used the company to operate a Ponzi scheme. The trustee had the burden of showing that there was no genuine issue of material fact, and there was a genuine dispute regarding whether the investor took the transfers in good faith, or gave reasonably equivalent value in exchange for the transfers; although a significant portion of the uncertainty in the evidence arose from the fact that the investor refused to respond to the trustee's requests for discovery, the trustee had done nothing more than highlight the investor's use of U.S. Const., amend. V. *Kerr v. Hart (In re Christou)*, No. 08-6420, 2010 Bankr. LEXIS 3432 (Bankr. N.D. Ga. Sept. 23, 2010).

O.C.G.A. § 18-2-74, allows the avoidance of a transfer made without receiving reasonably equivalent value when the debtor was either engaged or about to engage in a business or transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction, or the debtor intended to incur or believed or reasonably should have believed that he or she would incur debts beyond his or her ability to pay as the debts became due. *Scarver v. M. Abuhab Participacoes S.A. (In re Moskowitz)*, No. 10-6650-WLH, 2011 Bankr. LEXIS 4800 (Bankr. N.D. Ga. Nov. 28, 2011).

Trial court erred by granting summary judgment to a creditor because, under O.C.G.A. § 18-2-75(b), the questioned real estate transfer involved the debtor purchasing the property for the debtor's mother because the debtor had the right to purchase the property and it was only deeded to the debtor briefly the same day, which transfer was not to satisfy an antecedent debt, thus, no fraudulent transfer occurred. *Truelove v. Buckley*, 318 Ga. App. 207, 733 S.E.2d 499 (2012).

Summary judgment was inappropriate as to a lender's claims under Georgia's Uniform Fraudulent Transfers Act, O.C.G.A. § 18-2-70 et seq., because the evidence was not undisputed, particularly given the evidence of the guarantor's optimistic efforts to secure additional investors and shore up the financials of the guarantor's businesses during the same

approximate time frame. *Nissan Motor Acceptance Corp. v. Sowega Motors, Inc.*, No. (CDL), 2012 U.S. Dist. LEXIS 128854 (M.D. Ga. Sept. 11, 2012).

Trustee's avoidance action alleging fraudulent conveyance could not be resolved on summary judgment because, despite existence of several badges of fraud, the mere fact that the debtor thought the debtor was returning property that was not the debtors was sufficient to preclude avoiding transfers, and what the debtor believed or reasonably should have believed was genuine issues of material fact. *Kelley v. Speciale* (In re Gregg), No. 11-4047, 2013 Bankr. LEXIS 3285 (Bankr. M.D. Ga. July 2, 2013).

Statute mirrors Bankruptcy Code.

— As with actual fraud under Georgia

law, both O.C.G.A. §§ 18-2-74(a)(2)(B) and 18-2-75 substantially mirror the constructive fraud claims under the Bankruptcy Code. *Pettie v. Bonertz* (In re LendXFinancial, LLC), No. 11-05330-MGD, 2012 Bankr. LEXIS 1993 (Bankr. N.D. Ga. Mar. 16, 2012).

Analysis same as under 11 U.S.C. § 548(a)(1)(a). — O.C.G.A. § 18-2-74(a)(1) substantially mirrors 11 U.S.C. § 548(a)(1)(A) of the Bankruptcy Code. The Georgia statutes are different in that a creditor may recover property up to four years after the transfer occurred under O.C.G.A. § 18-2-79. *Pettie v. Bonertz* (In re LendXFinancial, LLC), No. 11-05330-MGD, 2012 Bankr. LEXIS 1993 (Bankr. N.D. Ga. Mar. 16, 2012).

18-2-75. Transfer or obligation fraudulent if incurred without receiving reasonably equivalent value.

JUDICIAL DECISIONS

Transfer of property set aside.

When an investor asserted fraudulent transfer and related claims against accounts in the names of the former wife and widow of a consultant who allegedly defrauded the investor, the claims survived a motion to dismiss because the investor: (1) stated viable claims; (2) did not have to anticipate affirmative defenses; and (3) did not admit such defenses. *Speedway Motorsports, Inc. v. Pinnacle Bank*, 315 Ga. App. 320, 727 S.E.2d 151 (2012).

Evidence that a corporation was insolvent at the time the corporation made payments in the amount of \$248,367 to each of two principals, and that the corporation did not receive reasonably equivalent value for the payments, was sufficient to show that the payments were constructively fraudulent and could be recovered for the corporation's bankruptcy estate under 11 U.S.C. § 544 and O.C.G.A. § 18-2-75; although the principals claimed that the payments were due on a loan the principals made to the corporation and that the principals returned some payments to the corporation's accounts, there was no evidence supporting the principal's claims. *Anderson v. Patel* (In re Diplomat Constr., Inc.), No.

11-5610, 2013 Bankr. LEXIS 4303 (Bankr. N.D. Ga. Aug. 26, 2013).

Reasonably equivalent value. — Debtor's twice monthly \$1833 payments to the defendant in exchange for regular, hotel managerial services did not constitute avoidable fraudulent transfers under O.C.G.A. §§ 18-2-74(a)(2)(B) and 18-2-75 because the defendant's work for the debtor constituted reasonably equivalent value in exchange for the payments. *Anderson v. Patel* (In re Diplomat Constr., Inc.), No. 11-5611, 2013 Bankr. LEXIS 4297 (Bankr. N.D. Ga. Aug. 6, 2013).

Summary judgment improper. — Trial court erred by granting summary judgment to a creditor because under O.C.G.A. § 18-2-75(b), the questioned real estate transfer involved the debtor purchasing the property for the debtor's mother because the debtor had the right to purchase the property and the property was only dedeed to the debtor briefly the same day, which transfer was not to satisfy an antecedent debt, thus, no fraudulent transfer occurred. *Truelove v. Buckley*, 318 Ga. App. 207, 733 S.E.2d 499 (2012).

Summary judgment was inappropriate as to a lender's claims under Georgia's

Uniform Fraudulent Transfers Act, O.C.G.A. § 18-2-70 et seq., because the evidence was not undisputed, particularly given the evidence of the guarantor's optimistic efforts to secure additional investors and shore up the financials of the guarantor's businesses during the same approximate time frame. *Nissan Motor Acceptance Corp. v. Sowega Motors, Inc.*, No. (CDL), 2012 U.S. Dist. LEXIS 128854 (M.D. Ga. Sept. 11, 2012).

Trustee's avoidance action alleging fraudulent conveyance could not be resolved on summary judgment because genuine issue of material fact existed with respect to the debtor's insolvency. *Kelley v. Speciale* (In re Gregg), No. 11-4047, 2013 Bankr. LEXIS 3285 (Bankr. M.D. Ga. July 2, 2013).

Dispute over law firm's fees payable by debtor. — In a complaint seeking to recover pre-petition transfers made by a Chapter 11 debtor to a law firm, the law firm's motion for summary judgment was denied as there was a genuine dispute of material fact regarding whether the debtor failed to receive reasonably equivalent value for the transfers as required by either 11 U.S.C. § 548(a)(1)(B)(I) or O.C.G.A. § 18-2-75(a). The law firm contended that the firm's invoices demonstrated that the firm provided substantial legal services to the debtor in exchange for the payments the firm received, while the debtor's responsible officer contended that the descriptions of work in the invoices were too vague and cursory to evaluate whether the services constituted reasonably equivalent value. *Davis v. McDermott Will & Emery LLP* (In re Tom's Foods, Inc.), No. 07-4012, 2010 Bankr. LEXIS 3720 (Bankr. M.D. Ga. Oct. 20, 2010).

Obligation and payments thereon evaluated separately. — In a fraudulent conveyance action, the need to evaluate a debt separately from the payments thereon was evidenced by 11 U.S.C. § 548 and O.C.G.A. § 18-2-75(a), which permitted the obligation and the payments to be avoided separately or together. *Watts v. Peachtree Tech. Partners, LLC* (In re Palisades at West Paces Imaging Ctr., LLC), No. 11-5183, 2011 Bankr. LEXIS 3576 (Bankr. N.D. Ga. Sept. 13, 2011).

Fraudulent transfer shown. — One million three hundred forty thousand dollars (\$1,340,000) in payments made by the debtor to an insider, allegedly for a construction management fee, were avoidable because there was no evidence to support any reasonably equivalent value in excess of the \$175,000 contract price since there was no evidence as to what the "extras" were, the cost of the "extras", or even a contractual basis for the extra charges. *Watts v. MTC Dev., LLC* (In re Palisades at W. Paces Imaging Ctr., LLC), 501 B.R. 896 (Bankr. N.D. Ga. 2013).

Payments made by Chapter 7 debtor to an insider, allegedly for a construction management fee, were avoidable as a transfer made to an insider for an antecedent debt because the insider had reasonable cause to believe the debtor was insolvent at the time the payments were made, and, even under the insider's version of the facts, the payments were for antecedent debt. *Watts v. MTC Dev., LLC* (In re Palisades at W. Paces Imaging Ctr., LLC), 501 B.R. 896 (Bankr. N.D. Ga. 2013).

Checks payable from a Chapter 7 debtor that were deposited in an insider's account were avoidable because there was no evidence that the debtor, which was insolvent at the time of the transfers, received any value as a result of the checks, nor any evidence that the insider used the funds to pay any valid expenses of the debtor. *Watts v. MTC Dev., LLC* (In re Palisades at W. Paces Imaging Ctr., LLC), 501 B.R. 896 (Bankr. N.D. Ga. 2013).

Checks payable from a Chapter 7 debtor that were deposited in an insider's account were avoidable because the checks were on account of antecedent debt. *Watts v. MTC Dev., LLC* (In re Palisades at W. Paces Imaging Ctr., LLC), 501 B.R. 896 (Bankr. N.D. Ga. 2013).

Although transfers by a Chapter 7 debtor to insiders could not be avoided because the debtor received reasonably equivalent value, the transfers were nonetheless avoidable because they were made on account of antecedent debt at a time when the debtor was insolvent. *Watts v. MTC Dev., LLC* (In re Palisades at W. Paces Imaging Ctr., LLC), 501 B.R. 896 (Bankr. N.D. Ga. 2013).

18-2-77. Relief for creditor against fraudulent transfer or obligation.

JUDICIAL DECISIONS

Claims survived motion to dismiss.

— When an investor asserted fraudulent transfer and related claims against accounts in the names of the former wife and widow of a consultant who allegedly defrauded the investor, the claims survived a motion to dismiss because the investor: (1) stated viable claims; (2) did not have to anticipate affirmative defenses; and (3) did not admit such defenses. *Speedway Motorsports, Inc. v. Pinnacle Bank*, 315 Ga. App. 320, 727 S.E.2d 151 (2012).

Transfer prior to death. — Although the transfer of a house was accompanied by some badges of fraud, the trial court abused the court's discretion in enjoining further disposition of the house, pending adjudication of the merits of wrongful death and fraudulent transfer claims since the transferor gave the house to the transferor's three minor grandchildren in Florida three months before the transferor murdered the decedent. *Bishop v. Patton*, 288 Ga. 600, 706 S.E.2d 634, overruled on other grounds by *SRB Inv. Servs., LLLP v. Branch Banking & Trust Co.*, 289 Ga. 1, 709 S.E.2d 267 (2011).

Interlocutory injunction proper. —

Trial court did not abuse the court's discretion in entering an interlocutory injunction to preserve the status quo pending adjudication of the merits of the creditor's action against the debtors alleging breach of contract and fraudulent transfers in violation of the Georgia Uniform Fraudulent Transfers Act (UFTA), O.C.G.A. § 18-2-70 et seq., because at least seven statutory badges of fraud listed in the UFTA, O.C.G.A. § 18-2-74(b), were implicated, and the creditor also presented evidence as a non-statutory badge of fraud of the debtors' pattern of maintaining just enough funds in certain accounts to satisfy the debtors' financial covenants at the end of each quarter and then transferring the funds away shortly thereafter; under the UFTA, O.C.G.A. § 18-2-77(a)(3)(A), the trial court was authorized to enter an interlocutory injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property. *SRB Inv. Servs., LLLP v. Branch Banking & Trust Co.*, 289 Ga. 1, 709 S.E.2d 267 (2011).

18-2-78. Conditions for voidability of transfer or obligation; judgment.

JUDICIAL DECISIONS

Reasonably equivalent value.

When an investor asserted a fraudulent transfer claim against a bank to which a consultant who allegedly defrauded the investor made a down payment on a house, it was error to dismiss the claim based on the bank's assertion that the bank, under O.C.G.A. § 18-2-74(a)(1), took the consultant's funds in good faith and for a reasonably equivalent value because: (1) the investor's complaint did not admit or otherwise demonstrate such an affirmative defense; and (2) the investor had no obligation to anticipate the affirmative defense. *Speedway*

Motorsports, Inc. v. Pinnacle Bank, 315 Ga. App. 320, 727 S.E.2d 151 (2012).

Summary judgment improper.

Creditor failed to show good faith under O.C.G.A. § 18-2-78 in receiving fraudulent transfers from a bankruptcy debtor as returns on the creditor's investments in the debtor's Ponzi scheme, and thus the creditor was not entitled to summary judgment; the creditor was an educated and sophisticated businessman and, despite the creditor's assertion that the creditor had no reason to doubt the debtor who previously brokered mortgages for the creditor, the facts that the creditor in-

vested substantial funds, received no promissory notes, and was paid no interest were sufficient to indicate that the creditor should have been suspicious of

the nature of the transactions. In re Christou v. Cressaty Metals, Inc., No. 08-6402, 2010 Bankr. LEXIS 3430 (Bankr. N.D. Ga. Sept. 23, 2010).

18-2-79. Time for commencement of action.

JUDICIAL DECISIONS

Limitations on actions.

Chapter 7 trustee was not barred by the statute of limitations under O.C.G.A. § 18-2-79 or under 11 U.S.C. § 546 from pursuing a cause of action under 11 U.S.C. § 544 because the debtor filed the debtor's petition before the state statute of limitations expired, but was barred from pursuing avoidance under 11 U.S.C. § 548 of any transfer occurring prior to two years before the petition was filed. *Watts v. Peachtree Tech. Partners, LLC* (In re Palisades at West Paces Imaging Ctr., LLC), No. 11-5183, 2011 Bankr. LEXIS 3576 (Bankr. N.D. Ga. Sept. 13, 2011).

As an administrator's fraudulent conveyance claims were time-barred under O.C.G.A. §§ 18-2-74(a)(1) and 18-2-79(1), a limited liability company's (LLC) failure to respond to the administrator's requests for admissions was of no consequence and the trial court's denial of summary judgment to the LLC was improper. *Huggins v. Powell*, 315 Ga. App. 599, 726 S.E.2d 730 (2012).

Administrator's fraudulent conveyance claims against group one were time-barred under O.C.G.A.

§§ 18-2-74(a)(1) and 18-2-79(1), even though the claim was not time-barred under the limitations period in effect when the claim accrued, as application of § 18-2-79, a procedural law in effect at the time the suit was filed, did not violate the constitutional prohibition against retroactive laws under Ga. Const. 1983, Art. I, Sec. I, Para. X; the administrator also failed to avail the administrator of the one-year statute of limitation effective upon discovery of the alleged fraud. *Huggins v. Powell*, 315 Ga. App. 599, 726 S.E.2d 730 (2012).

Fraudulent transfer claim was time-barred. — Former director's putative transferee met the transferee's burden for summary judgment purposes of asserting that a fraudulent transfer claim was time-barred, but the creditor failed to point to specific evidence that gave rise to a triable issue with respect to whether the limitation period did not bar the claim. *Am. Nat'l Holding Corp. v. EMM Credit, LLC*, 323 Ga. App. 655, 748 S.E.2d 683 (2013).

Cited in *Bishop v. Patton*, 288 Ga. 600, 706 S.E.2d 634 (2011).

18-2-80. Principles of law and equity remain applicable; application of state and federal law.

JUDICIAL DECISIONS

Cited in *Bishop v. Patton*, 288 Ga. 600, 706 S.E.2d 634 (2011).

18-2-81. Transfers to charitable organizations; statute of limitations.

(a) As used in this Code section, the term:

(1) "Charitable organization" means an organization which has qualified as tax-exempt under Section 501(c)(3) of the federal Inter-

nal Revenue Code of 1986 and has been so qualified for not less than two years preceding any transfer pursuant to this Code section, other than a private foundation or family trust.

(2) "Private foundation" shall have the same meaning as set forth in 26 U.S.C. Section 509(a).

(b) A transfer made to a charitable organization shall be considered complete unless it is established that a fraudulent transfer has occurred as described in Code Section 18-2-74 or 18-2-75, and such charitable organization had knowledge of the fraudulent nature of the transfer.

(c) The statute of limitations for a civil action with respect to a transfer to a charitable organization under this Code section shall be within two years after such transfer was made. (Code 1981, § 18-2-81, enacted by Ga. L. 2013, p. 1045, § 1/SB 105.)

Effective date. — This Code section became effective July 1, 2013.

CHAPTER 4

GARNISHMENT PROCEEDINGS

Article 1

General Provisions

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18-4-1. Definitions; practice and procedure generally.
18-4-3. Amendment of affidavits, bonds, garnishee answer, or pleadings.
18-4-8. Definitions; entity as garnishee; execution and filing by certain officers or employees of an entity.

Article 2

Property and Persons Subject to Garnishment

- 18-4-20. Property subject to garnishment generally; claim amount and defendant's social security number on summons; information to be contained on summons of garnishment upon financial institution.

Sec.

- 18-4-21. Garnishment of salaries of officials and employees of state and its subdivisions; exemption; summons.
18-4-23. Service of summons of garnishment controlled by Civil Practice Act.

Article 4

Postjudgment Garnishment Proceedings Generally

- 18-4-62. Contents and service of summons of garnishment; requirements as to filing of answer to summons.
18-4-66. Forms for postjudgment garnishment.

Article 5

Answer by Garnishee and Subsequent Proceedings

- 18-4-80. Effect of release of summons of garnishment on garnishee.

Sec.

- 18-4-81. Effect of defendant's traverse on garnishee; filing of bond by defendant; entry of judgment on bond.
- 18-4-82. Contents of garnishee answer.
- 18-4-83. Service of answer of garnishee on plaintiff or attorney.
- 18-4-84. Delivery to court of property admitted to be subject to garnishment; property in safety deposit box.
- 18-4-85. Traverse of answer of garnishee by plaintiff — Time period; discharge for failure to traverse.
- 18-4-90. Entry of default judgment upon failure of garnishee to file garnishee answer to summons; opening of default.
- 18-4-91. Relief of garnishee from default judgment.
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- 18-4-92.1. Relief of garnishee from liability; definitions.
- 18-4-97. Right of garnishee to actual reasonable expenses in making true garnishee answer of garnishment; procedure for collection; reimbursement.

Article 6

Continuing Garnishment Proceedings

- 18-4-110. Right of plaintiff who has obtained money judgment to process of continuing garnishment; methods, practices, and

Sec.

- procedures for continuing garnishment generally.
- 18-4-112. Filing and contents of affidavit for continuing garnishment; issuance of summons; notice and service of summons.
- 18-4-113. Contents of summons of continuing garnishment; filing and contents of garnishee answers.
- 18-4-114. Traverse of garnishee answer by plaintiff.
- 18-4-115. Entry of default judgment against garnishee; relief from default judgment.
- 18-4-116. Effect of and proceedings upon filing of traverse by defendant.
- 18-4-117. Effect of termination of employment relationship between garnishee and defendant.
- 18-4-118. Forms for continuing garnishment.

Article 7

Continuing Garnishment for Support

- 18-4-133. Service of summons; requirements as to filing of first garnishee answer accompanied by money; application of money.
- 18-4-134. Filing further garnishee answers and tendering money; application of money; filing of final garnishee answer by garnishee upon termination of defendant's employment.
- 18-4-135. Period of attachment of writ of garnishment; garnishee's reliance upon information in affidavit of garnishment.

Cross references. — Garnishments, Uniform Rules for the Superior Courts of Georgia, Rule 15.1.

ARTICLE 1
GENERAL PROVISIONS

18-4-1. Definitions; practice and procedure generally.

(a) As used in this chapter, the terms “garnishee answer,” “garnishee’s answer,” or “answer of garnishee” means the response filed by a garnishee responding to a summons of garnishment detailing the property, money, or other effects of the defendant that are in the possession of the garnishee or declaring that the garnishee holds no such property, money, or other effects of the defendant.

(b) The procedure in garnishment cases shall be uniform in all courts throughout this state; and, except as otherwise provided in this chapter, Chapter 11 of Title 9 shall apply in garnishment proceedings. (Code 1933, § 46-305, enacted by Ga. L. 1976, p. 1608, § 1; Ga. L. 1982, p. 3, § 18; Ga. L. 2012, p. 2, § 1/HB 683.)

The 2012 amendment, effective February 7, 2012, added subsection (a); and designated the existing provisions as subsection (b).

18-4-3. Amendment of affidavits, bonds, garnishee answer, or pleadings.

Unless otherwise provided in this chapter, any affidavit, bond, garnishee answer, or pleading required or permitted by this chapter shall be amendable at any time before judgment thereon. (Code 1933, § 46-602, enacted by Ga. L. 1976, p. 1608, § 1; Ga. L. 2012, p. 2, § 2/HB 683.)

The 2012 amendment, effective February 7, 2012, inserted “garnishee answer,” in this Code section.

18-4-8. Definitions; entity as garnishee; execution and filing by certain officers or employees of an entity.

(a) As used in this Code section, the term:

(1) “Entity” means a public corporation or a corporation, limited liability company, partnership, limited partnership, professional corporation, firm, or other business entity other than a natural person.

(2) “Public corporation” means the State of Georgia or any department, agency, branch of government, or State of Georgia political subdivision, as such term is defined in Code Section 50-15-1, or any public board, bureau, commission, or authority created by the General Assembly.

(b) When a garnishment proceeding is filed in a court under any provision of this chapter involving an entity as garnishee, the execution and filing of a garnishee answer may be done by an entity's authorized officer or employee and shall not constitute the practice of law. If a traverse or claim is filed to such entity's garnishee answer in a court of record, an attorney shall be required to represent such entity in further garnishment proceedings.

(c) An entity's payment into court of any property, money, or other effects of the defendant, or property or money which is admitted to be subject to garnishment, may be done by an entity's authorized officer or employee and shall not constitute the practice of law. (Code 1981, § 18-4-8, enacted by Ga. L. 2012, p. 2, § 3/HB 683.)

Effective date. — This Code section became effective February 7, 2012.

ARTICLE 2

PROPERTY AND PERSONS SUBJECT TO GARNISHMENT

18-4-20. Property subject to garnishment generally; claim amount and defendant's social security number on summons; information to be contained on summons of garnishment upon financial institution.

(a) As used in this Code section, the term:

(1) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of the amounts required by law to be withheld.

(2) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(b) All debts owed by the garnishee to the defendant at the time of service of the summons of garnishment upon the garnishee and all debts accruing from the garnishee to the defendant from the date of service to the date of the garnishee's answer shall be subject to process of garnishment; and no payment made by the garnishee to the defendant or to his order, or by any arrangement between the defendant and the garnishee, after the date of the service of the summons of garnishment upon the garnishee, shall defeat the lien of such garnishment.

(c) All property, money, or effects of the defendant in the possession or control of the garnishee at the time of service of the summons of garnishment upon the garnishee or coming into the possession or

control of the garnishee at any time from the date of service of the summons of garnishment upon the garnishee to the date of the garnishee's answer shall be subject to process of garnishment except, in the case of collateral securities in the hands of a creditor, such securities shall not be subject to garnishment so long as there is an amount owed on the debt for which the securities were given as collateral.

(d)(1) Notwithstanding subsection (a) of this Code section, the maximum part of the aggregate disposable earnings of an individual for any work week which is subject to garnishment may not exceed the lesser of:

(A) Twenty-five percent of his disposable earnings for that week;
or

(B) The amount by which his disposable earnings for that week exceed 30 times the federal minimum hourly wage prescribed by Section 6(a)(1) of the Fair Labor Standards Act of 1938, U.S.C. Title 29, Section 206(a)(1), in effect at the time the earnings are payable.

(2) In case of earnings for a period other than a week, a multiple of the federal minimum hourly wage equivalent in effect to that set forth in subparagraph (B) of paragraph (1) of this subsection shall be used.

(e) The limitation on garnishment set forth in subsection (d) of this Code section shall apply although the garnishee may receive a summons of garnishment in more than one garnishment case naming the same defendant unless the garnishee has received a summons of garnishment based on a judgment for alimony or the support of a dependent, in which case the limitation on garnishment set forth in subsection (f) of this Code section shall apply although the garnishee may receive a summons of garnishment in more than one garnishment case naming the same defendant. No garnishee shall withhold from the disposable earnings of the defendant any sum greater than the amount prescribed by subsection (d) or subsection (f) of this Code section, as applicable, regardless of the number of summonses served upon the garnishee.

(f) The exemption provided by subsection (d) of this Code section shall not apply if the judgment upon which the garnishment is based is a judgment for alimony or for the support of any dependent of the defendant, provided the summons of garnishment shall contain a notice to the garnishee that the garnishment is based on the judgment for alimony or the support of a dependent. In any case in which the garnishment is based on the judgment, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment shall be 50 percent of the individual's disposable earnings for that week.

(g) Except as provided in Article 7 of this chapter for a summons of continuing garnishment for support, the summons of garnishment, including a summons of continuing garnishment pursuant to Article 6 of this chapter, shall on its face state the total amount claimed to be due at the time of the summons and the amount subject to garnishment shall not exceed the amount so shown on the summons of garnishment.

(h) The summons of garnishment, including a summons of continuing garnishment, shall on its face set forth the social security number of the defendant to the extent it is reasonably available to the plaintiff; provided, however, that if such summons is filed with a court, the court filing shall be redacted in accordance with Code Section 9-11-7.1 or 15-10-54, as applicable. The defendant's full social security number shall be made known to the garnishee and defendant in accordance with Code Section 9-11-7.1 or 15-10-54, as applicable, to the extent such information is reasonably available to the plaintiff.

(i)(1) A summons of garnishment upon a financial institution, or an attachment thereto, shall state with particularity all of the following information, to the extent reasonably available to the plaintiff:

(A) The name of the defendant, and, to the extent such would reasonably enable the garnishee to properly respond to the summons, all known configurations, nicknames, aliases, former or maiden names, trade names, or variations thereof;

(B) The service address and the current addresses of the defendant and, to the extent such would reasonably enable the garnishee to properly respond to the summons of garnishment and such is reasonably available to the plaintiff, the past addresses of the defendant;

(C) The social security number or federal tax identification number of the defendant; provided, however, that if such summons is filed with a court, the court filing shall be redacted in accordance with Code Section 9-11-7.1 or 15-10-54, as applicable. The defendant's full social security number or federal tax identification number shall be made known to the garnishee and defendant in accordance with Code Section 9-11-7.1 or 15-10-54, as applicable, to the extent such information is reasonably available to the plaintiff; and

(D) Account, identification, or tracking numbers reasonably available to the plaintiff used by the garnishee in the identification or administration of the defendant's funds or property; provided, however, that if such summons is filed with a court, the court filing shall be redacted in accordance with Code Section 9-11-7.1 or 15-10-54, as applicable. The defendant's account, identification, or tracking numbers shall be made known to the garnishee and

defendant in accordance with Code Section 9-11-7.1 or 15-10-54, as applicable, to the extent such information is reasonably available to the plaintiff.

(2) A misspelling of any information required by this subsection, other than the surname of a natural person defendant, shall not invalidate a summons of garnishment, so long as such information is not misleading in a search of the garnishee's records. (Code 1933, § 46-301, enacted by Ga. L. 1976, p. 1608, § 1; Ga. L. 1977, p. 159, § 3; Ga. L. 1980, p. 1769, §§ 2-4; Ga. L. 1984, p. 370, § 1; Ga. L. 1985, p. 149, § 18; Ga. L. 1985, p. 785, § 1; Ga. L. 1985, p. 1632, § 1; Ga. L. 1997, p. 941, § 1; Ga. L. 2012, p. 2, § 4/HB 683; Ga. L. 2014, p. 482, § 7/SB 386.)

The 2012 amendment, effective February 7, 2012, in subsection (i), substituted "garnishee to properly respond to" for "garnishee to answer properly" in paragraphs (i)(1) and (i)(2).

The 2014 amendment, effective July 1, 2014, in subsection (h), substituted "shall on its face set forth the social security number of the defendant to the extent it is reasonably available to the plaintiff; provided, however, that if such summons is filed with a court, the court filing shall be redacted in accordance with Code Sec-

tion 9-11-7.1 or 15-10-54, as applicable." for "may on its face set forth, if known, the social security number of the defendant" and added the second sentence; and rewrote subsection (i). See editor's notes for applicability.

Editor's notes. — Ga. L. 2014, p. 482, § 10/SB 386, not codified by the General Assembly, provides, in part, that this Act shall become effective on July 1, 2014, and shall apply to any filings made on or after July 1, 2014.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Garnishment action properly allowed. — Trial court did not err by allowing a garnishment action to proceed because the garnishor was not pursuing a

reverse-piercing claim, or any other equitable action, against the garnishee, rather, the action arose from a garnishment action expressly authorized by law. *Carrier411 Servs. v. Insight Tech., Inc.*, 322 Ga. App. 167, 744 S.E.2d 356 (2013).

18-4-21. Garnishment of salaries of officials and employees of state and its subdivisions; exemption; summons.

(a) Money due officials or employees of a municipal corporation or county of this state or of the state government, or any department or institution thereof, as salary for services performed for or on behalf of the municipal corporation or county of this state, or the state, or any department or institution thereof, shall be subject to garnishment, except in no event may the officials' or employees' salary for services performed for or on behalf of any municipal corporation or county of this state, or the state, or any department or institution thereof, be

garnisheed where the judgment serving as a basis for the issuance of the summons of garnishment arises out of the liability incurred in the scope of the officials' or employees' governmental employment while responding to an emergency. In such cases, the summons shall be directed to such political entity and served upon the person authorized by law to draw the warrant on the treasury of the government or to issue a check for such salary due, or upon the chief administrative officer of the political subdivision, department, agency, or instrumentality; and such entity shall be required to respond to the summons in accordance with the mandate thereof and as provided by this chapter.

(b) For purposes of this Code section only, the state and its political subdivisions, departments, agencies, and instrumentalities shall be deemed private persons; and jurisdiction for the purpose of issuing a summons of garnishment shall be restricted to a court located in the county in which the warrant is drawn on the treasury of the government or in which the check is issued for the salary due the official or employee of the state or its political subdivisions, departments, agencies, or instrumentalities. (Code 1933, § 46-306, enacted by Ga. L. 1976, p. 1608, § 1; Ga. L. 1977, p. 634, § 1; Ga. L. 1980, p. 1769, § 6; Ga. L. 2012, p. 2, § 5/HB 683.)

The 2012 amendment, effective February 7, 2012, substituted "shall be required to respond to" for "is required to

answer" in the last sentence of subsection (a).

18-4-22. Exemption of pension or retirement funds or benefits.

JUDICIAL DECISIONS

Federal preemption. — Twenty-five percent of the defendant ERISA beneficiary's benefit payment was subject to garnishment by the defendant judgment creditor under a continuing garnishment pursuant to O.C.G.A. § 18-4-22(a) because the ERISA Plan was a Top Hat Plan, which was not subject to the ERISA anti-alienation provision, 29 U.S.C. § 1056. *AFLAC Inc. v. Diaz-Verson*, No. (CDL), 2012 U.S. Dist. LEXIS 73140 (M.D. Ga. May 25, 2012).

Annuity. — O.C.G.A. § 44-13-100 specifically addresses what types of annuities and similar contracts are exempt in bankruptcy cases. Therefore, the debtor's attempt to exempt the annuity under O.C.G.A. §§ 18-4-22 and 47-2-332 would have failed even if the annuity met the requirements of those statutes (which appeared not to be the case in any event). In *re Sheffield*, 2014 Bankr. LEXIS 900 (Bankr. S.D. Ga. Mar. 7, 2014).

18-4-23. Service of summons of garnishment controlled by Civil Practice Act.

The method of service of a summons of garnishment shall be as provided in Code Section 9-11-4. (Code 1933, § 46-304, enacted by Ga. L. 1976, p. 1608, § 1; Ga. L. 1984, p. 1319, § 2; Ga. L. 2012, p. 2, § 6/HB 683.)

The 2012 amendment, effective February 7, 2012, substituted the present provisions of this Code section for the former provisions, which read: "Service of a summons of garnishment shall be made by serving the agent in charge of the office or other place of business where the de-

fendant is employed. In the event that such service cannot be made, then service of a summons of garnishment upon the agent in charge of either the registered office or the principal place of business of a corporation shall be sufficient."

ARTICLE 3

PREJUDGMENT GARNISHMENT PROCEEDINGS GENERALLY

18-4-46. Personal earnings of defendant not subject to garnishment prior to judgment; statement of substance of Code section to appear on summons of garnishment.

JUDICIAL DECISIONS

Preemption by federal law. — Because O.C.G.A. § 18-4-46 would have required the defendant to obtain a state court judgment prior to garnishing the plaintiff debtor's wages, the Georgia statute was preempted by the Higher Educa-

tion Act, 20 U.S.C. § 1001 et seq., because that Act hindered the defendant's ability to garnish a debtor's wages. *Bennett v. Premiere Credit of N. Am., LLC*, No. 12-12859, 2013 U.S. App. LEXIS 1828 (11th Cir. Jan. 28, 2013) (Unpublished).

ARTICLE 4

POSTJUDGMENT GARNISHMENT PROCEEDINGS GENERALLY

18-4-62. Contents and service of summons of garnishment; requirements as to filing of answer to summons.

(a) The summons of garnishment shall be directed to the garnishee, commanding the garnishee to respond stating what money or other property is subject to garnishment. Except as provided in subsection (b) or (c) of this Code section, the garnishee's answer shall be filed with the court issuing the summons not sooner than 30 days and not later than 45 days after the service of the summons and shall be accompanied by the money or other property subject to garnishment. Upon the affidavit and summons being delivered to the sheriff, marshal, constable, or like officer of the court issuing the summons, it shall be his or her duty to serve the summons of garnishment, as set forth in Code Section 18-4-23, upon the person to whom it is directed and to make an entry of service upon the affidavit and return the affidavit to the court. The summons of garnishment shall state that if the garnishee fails to file a garnishee's answer to the summons, a judgment by default will be entered against the garnishee for the amount claimed by plaintiff against the defendant.

(b) Under circumstances where the defendant has been an employee of the garnishee, and if the defendant is no longer employed by the

garnishee, and if the garnishee has no money or property of the defendant subject to garnishment, the garnishee may immediately file the garnishee's answer; provided, however, that such garnishee's answer shall be filed not later than 45 days after the service of the summons.

(c) If the garnishee is a bank or other financial institution and if the defendant does not have an active account with, and is not the owner of any money or property in the possession of, the bank or financial institution, then the garnishee may immediately file a garnishee's answer; provided, however, that such garnishee's answer shall be filed not later than 45 days after the service of the summons. (Code 1933, § 46-103, enacted by Ga. L. 1976, p. 1608, § 1; Ga. L. 1983, p. 454, § 1; Ga. L. 2012, p. 2, § 7/HB 683.)

The 2012 amendment, effective February 7, 2012, in subsection (a), in the first sentence, substituted "the garnishee to respond" for "him to file an answer", in the second sentence, substituted "the garnishee's answer shall" for "the answer must", and substituted "shall be" for "must be", in the third sentence, inserted "or her", inserted ", as set forth in Code Section 18-4-23," and substituted "an entry" for "his entry", in the fourth sentence, deleted a comma following "that", inserted "file a garnishee's", and inserted "to"; in subsection (b), substituted "file the garnishee's

answer; provided, however, that such garnishee's" for "file an answer; however, such"; and, in subsection (c), substituted "file a garnishee's answer; provided, however, that such garnishee's" for "file an answer; however, such".

Law reviews. — For article discussing an advisory opinion issued by the Standing Committee on the Unlicensed Practice of Law on the issue of execution and filing of an answer in the garnishment action by a nonattorney employee of the garnishee, see 16 (No. 1) Ga. St. B.J. 102 (2010).

18-4-64. Service of copy of summons of garnishment upon defendant; notice of filing and issuance of summons of garnishment; time for distribution.

JUDICIAL DECISIONS

Substantial compliance with three-day notice period was insufficient. — Court of Appeals erred when the court held that a judgment creditor's notification of a judgment debtor of a garnishment eight business days after service of the garnishee substantially

complied with O.C.G.A. § 18-4-64(a)(7)'s requirement that notice be given within three business days. O.C.G.A. § 1-3-1 did not apply because the statute was unambiguous. *Cook v. NC Two*, L.P., 289 Ga. 462, 712 S.E.2d 831 (2011).

18-4-65. Issues defendant may raise by traverse of plaintiff's affidavit.

JUDICIAL DECISIONS

Res judicata. — Trial court properly granted a bank summary judgment in a

suit for conversion against the bank brought by a debtor because the debtor's

claim was barred by res judicata since the debtor failed to raise any challenge in the garnishment proceeding wherein the bank was a garnishee. *Copeland v. Wells Fargo Bank, N.A.*, 317 Ga. App. 669, 732 S.E.2d 536 (2012), cert. denied, No. S13C0189, 2013 Ga. LEXIS 124 (Ga. 2013).

Traverse properly granted as to garnishment petition.

Trial court did not err in granting a sole proprietorship’s traverse, in which it sought to become a party in a golf supplier’s garnishment action and asserted a verified claim to the funds at issue, because there was some evidence to support

the findings that the sole proprietorship was a separate and distinct entity from the corporation and that the garnishee assented to the modification of a contract to replace the corporation with the sole proprietorship as contractor; the sole proprietorship had its own tax identification number and liability insurance, and a representative of the garnishee testified that the garnishee was aware that someone had changed the contractor’s name and that the garnishee had no business dealings with the corporation. *A. M. Buckler & Assocs. v. Sanders*, 305 Ga. App. 704, 700 S.E.2d 701 (2010).

18-4-66. Forms for postjudgment garnishment.

For the purpose of Articles 1 through 5 of this chapter, the following forms are declared to be sufficient for garnishment after judgment, provided that nothing in this Code section shall be construed to require the use of particular forms in any proceeding under this article:

- (1) Garnishment affidavit.

IN THE _____ COURT OF _____ COUNTY
STATE OF GEORGIA

_____)	
Plaintiff)	
)	
v.	)	Civil action
	)	File no. _____
_____)	
Defendant)	
)	
_____)	
Garnishee)	
)	
_____)	
Address)	

GARNISHMENT AFFIDAVIT

Personally appeared the undersigned affiant who on oath says that he is the above plaintiff, his agent, or his attorney at law and that the above defendant is indebted to said plaintiff on a judgment described as follows:

_____ is the case number in the _____ Court of _____ County which rendered the judgment against the defendant, \$_____ being the

balance thereon.

Affiant

Sworn to and subscribed
before me this _____
day of _____, ____.

Plaintiff's attorney

(2) Summons of garnishment.

IN THE _____ COURT OF _____ COUNTY
STATE OF GEORGIA

_____)	
Plaintiff)	
)	
v.	)	Civil action
	)	File no. _____
_____)	
Defendant)	
Last four digits of)	
social security number)	
)	
_____)	
Garnishee)	
)	
_____)	
Address)	

SUMMONS OF GARNISHMENT

To: _____ Garnishee
Amount claimed due by plaintiff \$_____
(To be completed by plaintiff)

Plus court costs due on the summons \$_____
(To be completed by the clerk)

YOU ARE HEREBY COMMANDED to hold immediately all prop-
erty, money, wages, except what is exempt, belonging to the defen-
dant, or debts owed to the defendant named above at the time of
service of this summons and between the time of service of this
summons and the time of making your garnishee answer. Not sooner
than 30 days but not later than 45 days after you are served with this
summons, you are commanded to file your garnishee answer in
writing with the clerk of this court and serve a copy upon the plaintiff
or the plaintiff's attorney named below. Money or other property
subject to this summons should be delivered to the court with your

garnishee answer. Should you fail to file a garnishee answer to this summons, a judgment will be rendered against you for the amount the plaintiff claims due by the defendant.

Witness the Honorable _____, Judge of said Court.

This _____ day of _____, _____.

Clerk,
_____ Court of _____ County

Plaintiff's attorney

Address

Service perfected on garnishee, this _____ day of _____, _____.

Deputy marshal, sheriff,
or constable

(3) Defendant's traverse and order thereon.

IN THE _____ COURT OF _____ COUNTY
STATE OF GEORGIA

_____)	
Plaintiff)	
)	
v.	)	Civil action
	)	File no. _____
_____)	
Defendant)	
)	
_____)	
Garnishee)	

TRAVERSE OF DEFENDANT

Now comes the defendant in the above-styled case and traverses the plaintiff's affidavit by saying the same is untrue or legally insufficient.

Defendant or his
attorney at law

ORDER

It is hereby ordered that a hearing be held upon the defendant's traverse before this court on the _____ day of _____, _____, at

_____.M., and that a copy of the defendant's traverse and this order be served as provided by law.

This _____ day of _____, _____.

Judge,
_____ Court of _____ County

(CERTIFICATE OF SERVICE)

(4) Answer of garnishee.

IN THE _____ COURT OF _____ COUNTY
STATE OF GEORGIA

_____)	
Plaintiff)	
)	
v.	)	Civil action
	)	File no. _____
_____)	
Defendant)	
)	
_____)	
Garnishee)	

ANSWER OF GARNISHEE

1.

At the time of service or from the time of service to the time of this garnishee answer, garnishee had in its possession the following described property of the defendant:

2.

At the time of service or from the time of service to the time of this garnishee answer, all debt accruing from garnishee to defendant is in the amount of \$_____.

3.

\$_____ of the amount named in paragraph 2 was wages earned at the rate of \$_____ per _____ for the period beginning (date), _____, through the time of making this garnishee answer. The amount of wages which is subject to this garnishment is computed as follows:

\$ _____ Gross earnings

\$ _____ Total social security and withholding tax

\$ _____ Total disposable earnings

\$ _____ Amount of wages subject to garnishment

4.

Garnishee further states: _____.

Garnishee,
garnishee's attorney, or officer
or employee of an entity garnishee

(CERTIFICATE OF SERVICE)

(5) Plaintiff's traverse.

IN THE _____ COURT OF _____ COUNTY
STATE OF GEORGIA

_____)	
Plaintiff)	
)	
v.	)	Civil action
	)	File no. _____
)	
_____)	
Defendant)	
)	
)	
_____)	
Garnishee)	

TRAVERSE OF PLAINTIFF

Now comes the plaintiff in the above-styled case and traverses the garnishee's answer by saying the same is untrue or legally insufficient.

Plaintiff or his
attorney at law

(CERTIFICATE OF SERVICE)

(6) Release of garnishment.

IN THE _____ COURT OF _____ COUNTY
STATE OF GEORGIA

_____)	
Plaintiff)	
)	
v.	)	Civil action

_____) File no. _____
 _____)
 Defendant)
 _____)
 _____)
 Garnishee)
 _____)
 _____)
 Address)

RELEASE OF GARNISHMENT

To: _____ Garnishee

This is to notify you that you have been released from filing a garnishee answer to any and all summons of garnishment pending as of this date in the above-styled case.

This release authorizes you to deliver to the defendant in garnishment any money or other property in your possession belonging to the defendant.

This release does not terminate the garnishment proceedings, nor does this release relieve you of any obligation placed on you by the service of a summons of garnishment subsequent to this date.

This _____ day of _____, _____.

Clerk,

_____ Court of _____ County

(7) Attachment to summons of garnishment upon a financial institution.

IN THE _____ COURT OF _____ COUNTY

STATE OF GEORGIA

_____)	
Plaintiff)	
)	
v.	)	Civil action
	)	File no. _____
_____)	
Defendant)	
)	
_____)	
Other known names)	
of Defendant)	
_____)	
Current and past)	

addresses of Defendant)
_____)
Last four digits of)
social security number)
or federal tax)
identification number)
of Defendant)
_____)
Last four digits of)
account or identification)
numbers of Defendant)
used by Garnishee)
_____)
Other allegations)
_____)
Garnishee)

(Code 1933, § 46-605, enacted by Ga. L. 1976, p. 1608, § 1; Ga. L. 1984, p. 370, § 2; Ga. L. 1985, p. 1632, § 2; Ga. L. 1997, p. 941, § 2; Ga. L. 1999, p. 81, § 18; Ga. L. 2012, p. 2, § 8/HB 683; Ga. L. 2014, p. 482, § 8/SB 386.)

The 2012 amendment, effective February 7, 2012, inserted “garnishee” throughout paragraphs (2), (4), and (6); in paragraph (2), in the undesignated text in the second sentence, substituted “the plaintiff’s attorney” for “his attorney”, and substituted “fail to file a garnishee answer to” for “fail to answer” in the third sentence; in paragraph (4), in section 1 of the answer, substituted “its possession” for “his possession” and, near the end of the form, substituted “Garnishee, garnishee’s attorney, or officer or employee of an entity garnishee” for “Garnishee or his attorney at law”; in paragraph (6), in the undesignated text in the form, in the first sentence, substituted “a garnishee answer” for “an answer” near the middle.

The 2014 amendment, effective July 1, 2014, substituted “Last four digits of social security number” for “Social security number” in paragraph (2) of the form; and substituted “Last four digits of social security number” for “Social security number” and substituted “Last four digits of account or identification” for “Account or identification” in paragraph (7) of the form. See editor’s notes for applicability.

Editor’s notes. — Ga. L. 2014, p. 482, § 10/SB 386, not codified by the General Assembly, provides, in part, that this Act shall become effective on July 1, 2014, and shall apply to any filings made on or after July 1, 2014.

ARTICLE 5

ANSWER BY GARNISHEE AND SUBSEQUENT PROCEEDINGS

18-4-80. Effect of release of summons of garnishment on garnishee.

A release of summons of garnishment shall relieve the garnishee from any obligation to file a garnishee answer to any summons of garnishment pending on the date of the release and shall authorize the garnishee to deliver to the defendant in garnishment any money or other property in the garnishee's possession belonging to the defendant. A release shall not operate as a dismissal of the garnishment proceedings. (Code 1933, § 46-308, enacted by Ga. L. 1976, p. 1608, § 1; Ga. L. 2012, p. 2, § 9/HB 683.)

The 2012 amendment, effective February 7, 2012, substituted "a garnishee answer" for "an answer" in the first sentence of this Code section.

18-4-81. Effect of defendant's traverse on garnishee; filing of bond by defendant; entry of judgment on bond.

When the defendant files his or her traverse, the garnishee is not relieved of filing a garnishee answer, nor is the garnishee relieved of delivering the money or other property of the defendant which is subject to the garnishment to the court, unless the defendant files in the clerk's office of the court where the garnishment is pending a bond with good security, in favor of the plaintiff, conditioned for the payment of any judgment that may be entered in the proceeding. The bond shall be subject to approval by the clerk of the court; and, upon receipt of a bond deemed acceptable by the clerk, it shall be the clerk's duty to issue a release of any summons of garnishment pending in the garnishment proceeding. If the plaintiff shall prevail in the proceeding, the plaintiff shall be entitled to entry of judgment upon such bond against the principal and securities therein, as judgment may be entered against securities upon appeal. If the defendant files a bond, no further garnishment process may be filed in any court by the plaintiff against the defendant until the issues raised by the defendant's pleadings are decided. (Code 1933, § 46-402, enacted by Ga. L. 1976, p. 1608, § 1; Ga. L. 2012, p. 2, § 9/HB 683.)

The 2012 amendment, effective February 7, 2012, in the first sentence, inserted "or her" and substituted "a garnishee answer" for "an answer"; substituted "the clerk's duty" for "his duty" in the second sentence; substituted "the plaintiff shall" for "he shall" in the third sentence; and substituted "If the" for "Where the" in the fourth sentence.

18-4-82. Contents of garnishee answer.

Within the time prescribed by Code Section 18-4-62, the garnishee shall file a garnishee answer describing what money or other property is subject to garnishment under Code Section 18-4-20. If the garnishee owes the defendant any sum for wages, the garnishee answer shall also state specifically when the wages were earned by defendant and whether they were earned as daily, weekly, or monthly wages. If the garnishee has been served with summons in more than one garnishment case involving the same defendant, the garnishee shall state in each garnishee answer that the money or other property is being delivered to the court subject to the claims of all the cases and shall give the numbers of all such cases in each garnishee answer. If the garnishee is unable to respond as provided for in this Code section, the garnishee's inability shall appear in the garnishee's answer, together with all the facts plainly, fully, and distinctly set forth, so as to enable the court to give judgment thereon. (Code 1933, § 46-501, enacted by Ga. L. 1976, p. 1608, § 1; Ga. L. 2012, p. 2, § 9/HB 683.)

The 2012 amendment, effective February 7, 2012, substituted "garnishee answer" for "answer" three times in this Code section; substituted "a garnishee answer" for "his answer" in the first sen-

tence; and, in the last sentence, substituted "garnishee is unable to respond" for "garnishee shall be unable to answer" at the beginning and substituted "the garnishee's" for "his" twice.

18-4-83. Service of answer of garnishee on plaintiff or attorney.

All garnishee answers shall, concurrently with filing, be served upon the plaintiff or the plaintiff's attorney. Service may be shown by the written acknowledgment of the plaintiff or the plaintiff's attorney, or by the certificate of the garnishee or the garnishee's attorney, attached to the garnishee's answer, that a copy of the garnishee's answer was mailed to the plaintiff or the plaintiff's attorney; provided, however, that no service shall be required unless the name and address of the plaintiff or the plaintiff's attorney shall appear on the face of the summons of garnishment; provided, further, that, if the garnishee fails to serve the plaintiff, the plaintiff shall be allowed 15 days from the time the plaintiff receives actual notice of the garnishee's answer to traverse the same. (Code 1933, § 46-502, enacted by Ga. L. 1976, p. 1608, § 1; Ga. L. 2012, p. 2, § 9/HB 683.)

The 2012 amendment, effective February 7, 2012, substituted "All garnishee answers shall" for "All answers by the garnishee shall" at the beginning; substituted "plaintiff or the plaintiff's attorney" for "plaintiff or his attorney" four times

throughout the Code section; and, in the second sentence, substituted "garnishee or the garnishee's attorney" for "garnishee or his attorney", substituted "the garnishee's answer" for "the answer" twice, and inserted "that" near the middle.

18-4-84. Delivery to court of property admitted to be subject to garnishment; property in safety deposit box.

Along with the garnishee's answer, the garnishee shall deliver to the court the money or other property admitted in the garnishee's answer to be subject to garnishment. If in responding to the summons of garnishment, as provided in Code Section 18-4-82, the garnishee shall state that the property of the defendant includes property in a safe-deposit box or similar property, the garnishee shall respond to the court issuing the summons of garnishment as to the existence of such safe-deposit box and shall hold any contents of such safe-deposit box until the earlier of:

(1) Further order of said court either releasing the garnishment or specifically requiring the garnishee to open such safe-deposit box and deliver any contents thereof to said court upon conditions prescribed by said court; or

(2) The elapsing of 120 days from the date of filing of the garnishee answer to the summons of garnishment unless such time has been extended by the court. (Code 1933, § 46-503, enacted by Ga. L. 1976, p. 1608, § 1; Ga. L. 1997, p. 941, § 3; Ga. L. 2012, p. 2, § 9/HB 683.)

The 2012 amendment, effective February 7, 2012, in the introductory paragraph, in the first sentence, twice inserted "garnishee's", and, in the second sentence,

substituted "responding to" for "answering" and substituted "respond" for "answer"; and inserted "garnishee" in paragraph (2).

18-4-85. Traverse of answer of garnishee by plaintiff — Time period; discharge for failure to traverse.

If the garnishee's answer is served on the plaintiff as provided for in Code Section 18-4-83, the plaintiff or claimant shall traverse the garnishee's answer within 15 days after it is served, or the garnishee shall be automatically discharged from further liability with respect to the summons so answered. (Code 1933, § 46-504, enacted by Ga. L. 1976, p. 1608, § 1; Ga. L. 2012, p. 2, § 9/HB 683.)

The 2012 amendment, effective February 7, 2012, substituted the present provisions of this Code section for the former provisions, which read: "If the garnishee serves his answer on the plaintiff as provided for in Code Section 18-4-83,

the plaintiff or claimant must traverse the answer within 15 days after it is served or the garnishee is automatically discharged from further liability with respect to the summons so answered."

18-4-90. Entry of default judgment upon failure of garnishee to file garnishee answer to summons; opening of default.

In case the garnishee fails or refuses to file a garnishee answer by the forty-fifth day after service of the summons, the garnishee shall automatically be in default. The default may be opened as a matter of right by the filing of a garnishee answer within 15 days of the day of default and payment of costs. If the case is still in default after the expiration of the period of 15 days, judgment by default may be entered at any time thereafter against the garnishee for the amount claimed to be due on the judgment obtained against the defendant. (Code 1933, § 46-508, enacted by Ga. L. 1976, p. 1608, § 1; Ga. L. 2012, p. 2, § 10/HB 683.)

The 2012 amendment, effective February 7, 2012, substituted “a garnishee answer” for “an answer” in the first and second sentences.

JUDICIAL DECISIONS

When claim for default arises.

Garnishee failed to amend the defective answer as permitted by law and, pursuant to O.C.G.A. § 18-4-90, the garnishee was automatically in default. Because the garnishee failed to establish the presence of a nonamendable defect on the face of the

record or pleadings, the court abused the court’s discretion by granting the motion to set aside the default judgment. *Oxmoor Portfolio, LLC v. Flooring & Tile Superstore of Conyers, Inc.*, 320 Ga. App. 640, 740 S.E.2d 363 (2013).

18-4-91. Relief of garnishee from default judgment.

When a judgment is rendered against a garnishee under Code Section 18-4-90, on a motion filed not later than 60 days from the date the garnishee receives actual notice of the entry of the judgment against the garnishee, the garnishee may, upon payment of all accrued costs of court, have the judgment modified so that the amount of the judgment shall be reduced to an amount equal to the greater of \$50.00 or \$50.00 plus 100 percent of the amount by which the garnishee was indebted to the defendant from the time of service of the summons of garnishment through and including the last day on which a timely garnishee answer could have been made for all money, other property, or effects belonging to the defendant which came into the garnishee’s hands from the time of service of the summons through and including the last day on which a timely answer could have been made and, in the case of garnishment of wages, less any exemption allowed the defendant by law. Notice to the garnishee by certified mail or statutory overnight delivery shall be sufficient notice as required in this Code section. On the trial of the motion, the burden of proof shall be upon any plaintiff who objects to the timeliness of the motion to establish that the motion was not filed within the time provided for by this Code section. (Code 1933, § 46-509,

enacted by Ga. L. 1976, p. 1608, § 1; Ga. L. 1977, p. 783, § 1; Ga. L. 1980, p. 1769, § 7; Ga. L. 2000, p. 1589, § 3; Ga. L. 2012, p. 2, § 10/HB 683.)

The 2012 amendment, effective February 7, 2012, in the first sentence, substituted “the garnishee, the garnishee

may,” for “him, he may,” and inserted “garnishee” following “timely”.

JUDICIAL DECISIONS

Untimely motion. — Petitioner was not entitled to relief from a default judgment entered in favor of the judgment creditor because the petitioner did not seek relief from the default judgment until well outside the 60-day window pursu-

ant to O.C.G.A. § 18-4-91. *W. Ray Camp, Inc. v. Cavalry Portfolio Servs., LLC*, 308 Ga. App. 597, 708 S.E.2d 560 (2011).

Cited in *Lewis v. Capital Bank*, 311 Ga. App. 795, 717 S.E.2d 481 (2011).

18-4-92. Effect of garnishee’s failure to respond properly to summons of garnishment.

On the trial of the plaintiff’s traverse, if the court finds the garnishee has failed to respond properly to the summons of garnishment, the court shall disallow any expenses claimed by the garnishee and enter a judgment for any money or other property delivered to the court with the garnishee’s answer, plus any money or other property the court finds subject to garnishment which the garnishee has failed to deliver to the court; provided, however, that the total amount of such judgment shall in no event exceed the amount claimed due by the plaintiff, together with the costs of the garnishment proceeding. (Code 1933, § 46-514, enacted by Ga. L. 1976, p. 1608, § 1; Ga. L. 2012, p. 2, § 10/HB 683.)

The 2012 amendment, effective February 7, 2012, substituted “respond prop-

erly to” for “answer properly” near the beginning of this Code section.

JUDICIAL DECISIONS

Cited in *Carrier411 Servs. v. Insight Tech., Inc.*, 322 Ga. App. 167, 744 S.E.2d 356 (2013).

18-4-92.1. Relief of garnishee from liability; definitions.

(a) A garnishee may be relieved from liability for failure to file a garnishee answer properly to the summons of garnishment if the plaintiff failed to provide the information required by subsection (i) of Code Section 18-4-20 that would reasonably enable the garnishee to respond properly to the summons of garnishment and a good faith effort to locate the requested property was made by the garnishee based on the information provided by the plaintiff. In determining whether a

garnishee may be relieved of liability imposed by Code Section 18-4-92, the court shall consider and compare the accuracy and quantity of the information supplied by the plaintiff pursuant to subsection (i) of Code Section 18-4-20 with the manner in which the garnishee maintains and locates its records, the compliance by the garnishee with its own procedures, and the conformity of the record systems and procedures with reasonable commercial standards prevailing in the area in which the garnishee is located.

(b) A garnishee and a plaintiff shall not be subject to liability to any party or nonparty to the garnishment at issue arising from the attachment of a lien, the freezing, payment, or delivery into court of property, money, or effects reasonably believed to be that of the defendant if such attachment, freezing, payment, or delivery is reasonably required by a good faith effort to comply with the summons of garnishment. In determining whether such compliance by a garnishee is reasonable, the court shall proceed in the manner prescribed in subsection (a) of this Code section by comparing the efforts of the plaintiff to comply with subsection (i) of Code Section 18-4-20 and the garnishee's record system and procedures.

(c)(1) As used in this subsection, the term:

(A) "Association account" means any account, or any safe-deposit box or similar property, maintained by a corporation, statutory close corporation, limited liability company, partnership, limited partnership, limited liability partnership, foundation, trust, a national, state, or local government or quasi-government entity, or any other incorporated or unincorporated association.

(B) "Fiduciary account" means any account, or any safe-deposit box, maintained by any party in a fiduciary capacity for any other party other than the defendant in garnishment. Without limiting the foregoing, for purposes of this subsection, the term fiduciary account shall include any "trust account" as defined in Code Section 7-1-810, any account created pursuant to a transfer governed by Code Section 44-5-119, and any agency account or safe-deposit box governed by a power of attorney or other written designation of authority.

(2)(A) A garnishee shall not be liable for failure to deliver to the court property, money, or effects in an association account that may be subject to garnishment by reason of the fact that a defendant is an authorized signer on such association account, unless the summons of garnishment alleges that the association account is being used by the defendant for an improper or unlawful purpose.

(B) A garnishee shall not be liable for failure to deliver to the court property, money, or effects in a fiduciary account that may be

subject to garnishment if such account specifically is exempted from garnishment by the laws of this state.

(C) A garnishee shall not be liable for failure to deliver to the court property, money, or effects in a fiduciary account that may be subject to garnishment by reason of the fact that a defendant is a fiduciary of the fiduciary account, unless the summons of garnishment is against the defendant in the defendant's capacity as a fiduciary of the fiduciary account or the summons of garnishment alleges that the fiduciary account is being used by the defendant for an improper or unlawful purpose. (Code 1981, § 18-4-92.1, enacted by Ga. L. 1997, p. 941, § 4; Ga. L. 2012, p. 2, § 11/HB 683.)

The 2012 amendment, effective February 7, 2012, in the first sentence of subsection (a), substituted "file a garnishee answer properly to" for "answer

properly" near the beginning, and substituted "respond properly to the" for "answer properly the" near the middle.

JUDICIAL DECISIONS

Res judicata. — Trial court properly granted a bank summary judgment in a suit for conversion against the bank brought by a debtor because the debtor's claim was barred by res judicata since the debtor failed to raise any challenge in the

garnishment proceeding wherein the bank was a garnishee. *Copeland v. Wells Fargo Bank, N.A.*, 317 Ga. App. 669, 732 S.E.2d 536 (2012), cert. denied, No. S13C0189, 2013 Ga. LEXIS 124 (Ga. 2013).

18-4-93. Right of defendant to become a party to garnishment proceedings; procedure.

JUDICIAL DECISIONS

Res judicata. — Trial court properly granted a bank summary judgment in a suit for conversion against the bank brought by a debtor because the debtor's claim was barred by res judicata since the debtor failed to raise any challenge in the garnishment proceeding wherein the bank was a garnishee. *Copeland v. Wells Fargo Bank, N.A.*, 317 Ga. App. 669, 732 S.E.2d 536 (2012), cert. denied, No. S13C0189, 2013 Ga. LEXIS 124 (Ga. 2013).

Traverse properly granted. — Trial court did not err in granting a sole proprietorship's traverse, in which it sought to become a party in a golf supplier's garnishment action and asserted a verified claim to the funds at issue, because there was some evidence to support the findings that the sole proprietorship was a separate and distinct entity from the corpora-

tion and that the garnishee assented to the modification of a contract to replace the corporation with the sole proprietorship as contractor; the sole proprietorship had its own tax identification number and liability insurance, and a representative of the garnishee testified that the garnishee was aware that someone had changed the contractor's name and that the garnishee had no business dealings with the corporation. *A. M. Buckler & Assocs. v. Sanders*, 305 Ga. App. 704, 700 S.E.2d 701 (2010).

Relationship to bankruptcy law. — Chapter 7 debtor was entitled to claim that funds the debtor's employer withheld from the debtor's wages and remitted to a Georgia court were exempt from creditors' claims under O.C.G.A. § 44-13-100(a)(6) because the debtor still had the right at the time the debtor declared bankruptcy

to file a traverse under O.C.G.A. § 18-4-93 to an affidavit a creditor filed when the creditor garnished the debtor's wages. Because the debtor retained an interest in the funds, the funds became property of the debtor's bankruptcy estate

under 11 U.S.C. § 541(a)(1) and could be exempted from the creditors' claims, and a lien the creditor held on the funds could be avoided under 11 U.S.C. § 522(f). In re Williams, 460 B.R. 915 (Bankr. N.D. Ga. 2011).

18-4-95. Right of claimants of property subject to garnishment to become parties; procedure.

JUDICIAL DECISIONS

Claim timely. — Because a sole proprietorship filed a claim before the trial court entered judgment in the garnishment action or ordered the distribution of the money at issue, the claim was timely under O.C.G.A. § 18-4-95, and the trial court did not err in considering the claim. *A. M. Buckler & Assocs. v. Sanders*, 305 Ga. App. 704, 700 S.E.2d 701 (2010).

Traverse properly granted. — Trial court did not err in granting a sole proprietorship's traverse, in which it sought to become a party in a golf supplier's garnishment action and asserted a verified claim to the funds at issue, because there was some evidence to support the findings

that the sole proprietorship was a separate and distinct entity from the corporation and that the garnishee assented to the modification of a contract to replace the corporation with the sole proprietorship as contractor; the sole proprietorship had its own tax identification number and liability insurance, and a representative of the garnishee testified that the garnishee was aware that someone had changed the contractor's name and that the garnishee had no business dealings with the corporation. *A. M. Buckler & Assocs. v. Sanders*, 305 Ga. App. 704, 700 S.E.2d 701 (2010).

18-4-97. Right of garnishee to actual reasonable expenses in making true garnishee answer of garnishment; procedure for collection; reimbursement.

(a) The garnishee shall be entitled to the garnishee's actual reasonable expenses, including attorney's fees, in preparing and filing a garnishee's answer to a summons of garnishment. The amount so incurred shall be taxed in the bill of costs and shall be paid by the party upon whom the cost is cast, as costs are cast in other cases. The garnishee may deduct \$50.00 or 10 percent of the amount paid into court, whichever is greater, not to exceed \$100.00, as reasonable attorney's fees or expenses.

(b) If the garnishee can show that the garnishee's actual attorney's fees or expenses exceed the amount provided for in subsection (a) of this Code section, the garnishee shall petition the court for a hearing at the time of filing the garnishee's answer without deducting from the amount paid into court. Upon hearing from the parties, the court may enter an order for payment of actual attorney's fees or expenses proven by the garnishee to have been incurred reasonably in preparing and filing the garnishee's answer.

(c) In the event the garnishee makes the deduction permitted in subsection (a) of this Code section but the costs are later cast upon the garnishee, the garnishee shall forthwith refund to the defendant the funds deducted; and, if the costs are later cast against the plaintiff, the court shall enter judgment in favor of the defendant and against the plaintiff for the amount of the deductions made by the garnishee.

(d) Nothing in this Code section shall limit the reimbursement of costs incurred by a financial institution as provided by Code Section 7-1-237. (Code 1933, § 46-507, enacted by Ga. L. 1976, p. 1608, § 1; Ga. L. 1985, p. 1632, § 3; Ga. L. 1997, p. 941, § 5; Ga. L. 2012, p. 2, § 12/HB 683.)

The 2012 amendment, effective February 7, 2012, in subsection (a), substituted the present provisions of the first sentence for the former provisions, which read: "The garnishee shall be entitled to his actual reasonable expenses, including attorney's fees, in making a true answer of garnishment.", in the third sentence, substituted "\$50.00" for "\$25.00" and substituted "\$100.00" for "\$50.00"; in subsection (b), in the first sentence, substituted "the garnishee's" for "his" near the beginning, substituted "the garnishee shall" for "he

must" near the middle and substituted "filing the garnishee's" for "making his" near the end, and substituted "preparing and filing the garnishee's" for "making his" in the second sentence.

Law reviews. — For article discussing an advisory opinion issued by the Standing Committee on the Unlicensed Practice of Law on the issue of execution and filing of an answer in the garnishment action by a nonattorney employee of the garnishee, see 16 (No. 1) Ga. St. B.J. 102 (2010).

ARTICLE 6

CONTINUING GARNISHMENT PROCEEDINGS

18-4-110. Right of plaintiff who has obtained money judgment to process of continuing garnishment; methods, practices, and procedures for continuing garnishment generally.

In addition to garnishment proceedings otherwise available under this chapter, in cases where a money judgment has been obtained in a court of this state or a federal court sitting in this state, the plaintiff shall be entitled to the process of continuing garnishment against any garnishee who is an employer of the defendant against whom the judgment has been obtained. Unless otherwise specifically provided in this article, the methods, practices, and procedures for continuing garnishment shall be the same as for any other garnishment as provided in this chapter, including, but not limited to, those proceedings after a garnishee's answer as provided in Code Section 18-4-89. (Code 1933, § 46-701, enacted by Ga. L. 1980, p. 1769, § 8; Ga. L. 1981, p. 383, § 2; Ga. L. 1985, p. 1632, § 4; Ga. L. 2012, p. 2, § 13/HB 683.)

The 2012 amendment, effective February 7, 2012, substituted “has been” for “shall have been” in the first sentence, and

inserted “a garnishee’s” near the end of the last sentence.

JUDICIAL DECISIONS

Garnishment action properly allowed. — Trial court did not err by allowing a garnishment action to proceed because the garnishor was not pursuing a reverse-piercing claim, or any other equi-

table action, against the garnishee; rather, the action arose from a garnishment action expressly authorized by law. *Carrier411 Servs. v. Insight Tech., Inc.*, 322 Ga. App. 167, 744 S.E.2d 356 (2013).

18-4-112. Filing and contents of affidavit for continuing garnishment; issuance of summons; notice and service of summons.

(a) In addition to the information required by Code Section 18-4-61, an affidavit for continuing garnishment shall state that the plaintiff believes that the garnishee is or may be an employer of the defendant and subject to continuing garnishment and shall request that a summons of continuing garnishment shall issue. Upon the filing of the affidavit with the clerk of any court having jurisdiction over the garnishee, the clerk shall cause a summons of continuing garnishment to issue forthwith, provided that the affidavit shall first be made and approved as containing the information required by Code Section 18-4-61 and by this Code section in one of the ways provided for in Code Section 18-4-61.

(b) Only one summons of continuing garnishment may issue on one affidavit for continuing garnishment, and the defendant shall be given notice of the issuance of the summons using any method provided for in Code Section 18-4-64.

(c) The plaintiff, using either forms provided by the court or forms prepared by the plaintiff, shall cause forms sufficient for seven garnishee answers to a summons of continuing garnishment to be served on the garnishee along with the summons. (Code 1933, § 46-703, enacted by Ga. L. 1980, p. 1769, § 8; Ga. L. 2012, p. 2, § 14/HB 683.)

The 2012 amendment, effective February 7, 2012, in subsection (c), substi-

tuted “the plaintiff” for “himself” and inserted the first occurrence of “garnishee”.

18-4-113. Contents of summons of continuing garnishment; filing and contents of garnishee answers.

(a) The summons of continuing garnishment shall be directed to the garnishee, who shall be required:

(1) To file a first garnishee answer no later than 45 days after service of summons of continuing garnishment, which garnishee

answer shall state what property, money, or other effects of the defendant are subject to continuing garnishment from the time of service through and including the day of the first garnishee answer;

(2) To file further garnishee answers for the remaining period covered by the summons of continuing garnishment. Further garnishee answers shall be filed no later than 45 days after the previous garnishee answer date. Further garnishee answers shall state what property, money, or other effects of the defendant are subject to continuing garnishment from the previous garnishee answer date through and including the date on which that next garnishee answer is filed. No subsequent garnishee answers shall be required on a summons of continuing garnishment if the last garnishee answer filed states what property, money, or other effects of the defendant are subject to continuing garnishment from the previous garnishee answer date to and including the one hundred seventy-ninth day after service of summons of continuing garnishment. The last garnishee answer shall be filed, notwithstanding the other provisions of this paragraph, no later than the one hundred ninety-fifth day after service. For purposes of this paragraph, “previous garnishee answer date” means the date upon which the immediately preceding garnishee answer to the summons of continuing garnishment was filed as provided in this subsection; and

(3) To accompany all such garnishee answers with any property, money, or other effects of the defendant admitted in the garnishee answer to be subject to continuing garnishment.

(b) The summons of continuing garnishment shall state the requirements of subsection (a) of this Code section and shall inform the garnishee that failure to comply with such requirements may result in a judgment against the garnishee for the entire amount claimed due on the judgment against the defendant. (Code 1933, § 46-704, enacted by Ga. L. 1980, p. 1769, § 8; Ga. L. 2012, p. 2, § 15/HB 683.)

The 2012 amendment, effective February 7, 2012, inserted “garnishee” preceding “answer” and “answers” throughout subsection (a).

JUDICIAL DECISIONS

Default judgment. — Because a default judgment can be entered pursuant to O.C.G.A. § 18-4-115(a) only when the garnishee fails to timely file an answer, and by the plain terms of O.C.G.A. § 18-4-113(a)(1), the time in which an answer must be filed is triggered by the service of a summons of continuing garnishment, a default judgment is entered as provided in § 18-4-115(a) only after the

garnishee has been served with proper process or has waived service of process, and § 18-4-115(b) provides relief, therefore, only when process has been served or waived; when a court enters a default judgment in a continuing garnishment proceeding in which the garnishee has not been served with a summons of continuing garnishment and the court has not obtained jurisdiction of the person of the

garnishee, the default judgment is not one entered as provided in § 18-4-115(a), and § 18-4-115(b) affords no relief, and in such a case, the garnishee is entitled to bring a

motion to set aside the default judgment under O.C.G.A. § 9-11-60(d)(1). *Lewis v. Capital Bank*, 311 Ga. App. 795, 717 S.E.2d 481 (2011).

18-4-114. Traverse of garnishee answer by plaintiff.

If the garnishee’s answer is served on the plaintiff as provided in Code Section 18-4-83, the plaintiff shall traverse the garnishee answer within 15 days after it is served, or the garnishee shall be automatically discharged from further liability with respect to the summons so answered. (Code 1933, § 46-707, enacted by Ga. L. 1980, p. 1769, § 8; Ga. L. 2012, p. 2, § 15/HB 683.)

The 2012 amendment, effective February 7, 2012, substituted the present provisions of this Code section for the former provisions, which read: “If the garnishee serves his answer on the plaintiff

as provided in Code Section 18-4-83, the plaintiff must traverse the answer within 15 days after it is served or the garnishee is automatically discharged from further liability with respect to such answer.”

18-4-115. Entry of default judgment against garnishee; relief from default judgment.

(a) If the garnishee fails or refuses to file a garnishee answer at least once every 45 days, the garnishee shall automatically become in default. The default may be opened as a matter of right by the filing of the required garnishee answer within 15 days after the day of default upon payment of costs. If the case is still in default after the expiration of such period of 15 days, judgment by default may be entered at any time thereafter against garnishee for the amount claimed to be due on the judgment obtained against the defendant.

(b) The garnishee may obtain relief from default judgment entered as provided in subsection (a) of this Code section upon the same conditions as provided in Code Section 18-4-91. (Code 1933, § 46-708, enacted by Ga. L. 1980, p. 1769, § 8; Ga. L. 2012, p. 2, § 15/HB 683.)

The 2012 amendment, effective February 7, 2012, in subsection (a), substituted “a garnishee answer” for “an an-

swer” in the first sentence and inserted “garnishee” in the second sentence.

18-4-116. Effect of and proceedings upon filing of traverse by defendant.

(a) In a continuing garnishment proceeding, upon the filing of a traverse by defendant pursuant to Code Section 18-4-93, no further summons of garnishment may issue nor may any money delivered to the court as subject to garnishment be disbursed until the hearing is held upon defendant’s traverse. The filing of a traverse by the defendant

does not relieve the garnishee of the duties of filing a garnishee answer, of withholding property, money, or other effects subject to continuing garnishment, or of delivering to the court any property, money, or other effects subject to continuing garnishment.

(b) Nothing in this Code section shall affect the right of the defendant to file bond under this chapter. (Code 1933, § 46-705, enacted by Ga. L. 1980, p. 1769, § 8; Ga. L. 2012, p. 2, § 15/HB 683.)

The 2012 amendment, effective February 7, 2012, in the second sentence of subsection (a), substituted “a garnishee answer” for “an answer” and inserted a comma following “garnishment”.

18-4-117. Effect of termination of employment relationship between garnishee and defendant.

Notwithstanding the requirements of Code Section 18-4-113, if the employment relationship between the garnishee and the defendant does not exist at the time of the service of summons of continuing garnishment or terminates during the continuing garnishment, in any garnishee answer required by this article, the garnishee may state that the employment relationship between the garnishee and defendant does not exist or has been terminated, giving the date of termination if terminated on or after service of this summons of continuing garnishment. If no traverse is filed within 15 days after the garnishee answer is served as provided in Code Section 18-4-83, the garnishee shall be automatically discharged from further liability and obligation under Code Section 18-4-113 for that summons with respect to the period of continuing garnishment remaining after the employment relationship is terminated. (Code 1933, § 46-706, enacted by Ga. L. 1980, p. 1769, § 8; Ga. L. 2012, p. 2, § 15/HB 683.)

The 2012 amendment, effective February 7, 2012, inserted “garnishee” preceding “answer” in the first and second sentences, added a comma following “article” in the first sentence, and substituted “shall be” for “is” in the second sentence.

18-4-118. Forms for continuing garnishment.

For purposes of this article, the following forms are declared to be sufficient, along with those provided in Code Section 18-4-66, for continuing garnishment, provided that nothing in this Code section shall be construed to require the use of particular forms in any proceeding under this article:

- (1) Affidavit of continuing garnishment.

IN THE _____ COURT OF _____ COUNTY
STATE OF GEORGIA
_____)

Plaintiff)	
)	
v.	)	Civil action
	)	File no. _____
)	
Defendant)	
)	
)	
Garnishee)	
)	
)	
Address)	

AFFIDAVIT OF CONTINUING GARNISHMENT

Personally appeared the undersigned affiant who on oath says that he is the above plaintiff, his agent, or his attorney at law and that the above defendant is indebted to said plaintiff on a judgment described as follows:

_____ is the case number in the _____ Court of _____ County which rendered the judgment against the defendant, \$_____ being the balance thereon.

Affiant further states that affiant believes that garnishee is or may be an employer of the defendant and subject to continuing garnishment.

Affiant

Sworn to and subscribed
before me this _____
day of _____, _____.

Plaintiff's attorney

(2) Summons of continuing garnishment.

IN THE _____ COURT OF _____ COUNTY
STATE OF GEORGIA

_____)	
Plaintiff)	
)	
v.	)	Civil action
	)	File no. _____
)	
Defendant)	
Last four digits of)	

social security number)
_____)
Garnishee)
)
_____)
Address)

SUMMONS OF CONTINUING GARNISHMENT

To: _____ Garnishee

Amount claimed due by plaintiff \$ _____
(To be completed by plaintiff)

Plus court costs due on this summons \$_____

(To be completed by clerk)

YOU ARE HEREBY COMMANDED to hold immediately all property, money, wages, except what is exempt, belonging to the defendant, or debts owed to the defendant named above at the time of service of this summons and between the time of service of this summons to and including the one hundred seventy-ninth day thereafter. Not later than 45 days after you are served with this summons, you are commanded to file your garnishee answer in writing with the clerk of this court and serve a copy upon the plaintiff or his attorney named below. This garnishee answer shall state what property, money, and wages, except what is exempt, belonging to the defendant, or debts owed to the defendant, you hold or owe at the time of service of this summons and between the time of such service and the time of making your first garnishee answer. Thereafter, you are required to file further garnishee answers no later than 45 days after your last garnishee answer. Every further garnishee answer shall state what property, money, and wages, except what is exempt, belonging to the defendant, or debts owed to the defendant, you hold or owe at and from the time of the last garnishee answer to the time of the current garnishee answer. The last garnishee answer required by this summons shall be filed no later than the one hundred ninety-fifth day after you receive this summons. Money or other property admitted in a garnishee answer to be subject to continuing garnishment shall be delivered to the court with your garnishee answers. Should you fail to file garnishee answers as required by this summons, a judgment will be rendered against you for the amount the plaintiff claims due by the defendant.

Witness the Honorable _____, Judge of said Court.

This _____ day of _____, _____.

Clerk,

_____ Court of _____ County

Plaintiff's attorney

Address

Service perfected on garnishee, this _____ day of _____, _____.

Deputy marshal, sheriff,
or constable

(3) Garnishee answer of continuing garnishment.

IN THE _____ COURT OF _____ COUNTY
STATE OF GEORGIA

_____)	
Plaintiff)	
)	
v.	)	Civil action
	)	File no. _____
_____)	
Defendant)	
)	
_____)	
Garnishee)	
)	
_____)	
Address)	

GARNISHEE ANSWER OF CONTINUING GARNISHMENT

1.

From the time of service of this summons of continuing garnishment, if this is the first garnishee answer to such summons, otherwise from the time of the last garnishee answer to this summons of continuing garnishment, until the time of this garnishee answer, garnishee had in garnishee's possession the following described property of the defendant:

2.

From the time of service of this summons of continuing garnishment, if this is the first garnishee answer to such summons, otherwise from the time of the last garnishee answer to this summons of continuing garnishment, until the time of this garnishee answer, all

debts accruing from garnishee to the defendant are in the amount of \$_____.

3.

\$_____ of the amount named in paragraph 2 was wages earned at the rate of \$_____ per _____ for the period beginning (date), _____, through the time of making this garnishee answer. The amount of wages which is subject to this garnishment is computed as follows:

\$_____ Gross earnings

\$_____ Total social security and withholding tax

\$_____ Total disposable earnings

\$_____ Amount of wages subject to continuing garnishment

4.

() If checked, defendant is not presently employed by this garnishee and, if employed by garnishee on or after service of this summons of continuing garnishment, was most recently terminated as of the _____ day of _____, _____.

5.

() If checked, this is the last garnishee answer this garnishee is required to file to the presently pending summons of continuing garnishment in the above-styled case.

6.

Garnishee further states: _____.

Garnishee,
garnishee's attorney, or officer
or employee of an entity garnishee

(CERTIFICATE OF SERVICE)

(Code 1933, § 46-709, enacted by Ga. L. 1980, p. 1769, § 8; Ga. L. 1985, p. 1632, § 5; Ga. L. 1999, p. 81, § 18; Ga. L. 2012, p. 2, § 16/HB 683; Ga. L. 2014, p. 482, § 9/SB 386.)

The 2012 amendment, effective February 7, 2012, inserted "garnishee" preceding "answer" and "answers" throughout paragraphs (2) and (3); in paragraph (2), in the undesignated text, inserted a comma following "defendant" in the fifth sentence and in the next-to-last sentence, substituted "a garnishee answer" for "an answer" and substituted "shall be" for

"must be"; in paragraph (3), substituted "Garnishee answer" for "Answer" at the beginning, substituted "garnishee's possession" for "his possession" in the undesignated text, and substituted "Garnishee, garnishee's attorney, or officer or employee of an entity garnishee" for "Garnishee or his attorney at law" near the end.

The 2014 amendment, effective July 1, 2014, substituted “Last four digits of social security number” for “Social security number” in paragraph (2) of the form. See editor’s note for applicability.

Editor’s notes. — Ga. L. 2014, p. 482,

§ 10/SB 386, not codified by the General Assembly, provides in part, that this Act shall become effective on July 1, 2014, and shall apply to any filings made on or after July 1, 2014.

ARTICLE 7

CONTINUING GARNISHMENT FOR SUPPORT

18-4-133. Service of summons; requirements as to filing of first garnishee answer accompanied by money; application of money.

(a) The summons of continuing garnishment for support shall be directed to the garnishee who shall be required to file a first garnishee answer no later than 45 days after service, which garnishee answer shall state what earnings were payable to the defendant from the time of service through and including the day of the first garnishee answer and the basis for the computation of same, including the rate of pay and hours worked, or salaries, commissions, or other basis of compensation.

(b) The garnishee shall accompany such initial garnishee answer with money of the defendant admitted in the garnishee answer to be subject to continuing garnishment for support. In computing the amounts subject to this article, the provisions of subsection (f) of Code Section 18-4-20 shall control.

(c) The money paid into court with the initial garnishee answer, after deduction for costs, shall be first applied to the periodic support payment accrued on a daily basis from the date of the affidavit of the plaintiff to the date of the initial garnishee answer. All sums in excess of such periodic payment shall be applied to the original arrearage. Original arrearage shall mean those arrears existing as of the date of the making of the plaintiff’s affidavit, plus any amounts includable pursuant to subsection (b) of Code Section 18-4-134. (Code 1981, § 18-4-133, enacted by Ga. L. 1985, p. 785, § 2; Ga. L. 2012, p. 2, § 17/HB 683.)

The 2012 amendment, effective February 7, 2012, inserted “garnishee” pre-

ceding “answer” throughout this Code section.

18-4-134. Filing further garnishee answers and tendering money; application of money; filing of final garnishee answer by garnishee upon termination of defendant's employment.

(a) If the amount claimed as original arrearage as of the date of the making of the plaintiff's affidavit is not satisfied by the money payable into court under the initial garnishee answer, after application of the funds as set forth in subsection (c) of Code Section 18-4-133, the garnishee shall file further garnishee answers no later than 45 days after the previous garnishee answer date, stating the earnings accrued and the basis of their accrual and tendering such money accruing in such period. The amounts paid into court pursuant to subsequent garnishee answers, over and above the periodic payment accruing within such period, shall be applied to the original arrearage until the same is retired.

(b) If the earnings paid into court pursuant to any garnishee answer are less than the sums due under the periodic support requirement accruing over the same period of time, after allowance for any costs deductible from same, the resulting difference shall be added to the amount due as original arrearage until the same is retired by subsequent payments.

(c) The garnishee shall file additional garnishee answers until the original arrearage is retired and all periodic support payments are current.

(d) Upon the termination of employment of the defendant by the garnishee, the garnishee shall be required to file a final garnishee answer stating the date and reason for the defendant's termination from employment and stating, to the best of the garnishee's information, the defendant's present residential address and employer. (Code 1981, § 18-4-134, enacted by Ga. L. 1985, p. 785, § 2; Ga. L. 2012, p. 2, § 17/HB 683.)

The 2012 amendment, effective February 7, 2012, inserted "garnishee" preceding "answer" and "answers" throughout this Code section; in subsection (a), deleted "of the garnishee" preceding "after application" in the first sentence and

deleted "answer" preceding "period" near the end of the first and second sentences; and deleted "by the garnishee" preceding "are less than" near the beginning of subsection (b).

18-4-135. Period of attachment of writ of garnishment; garnishee's reliance upon information in affidavit of garnishment.

The writ of garnishment described in this article shall attach for so long as the defendant is employed by the garnishee and shall not

terminate until the original arrearage is retired. The garnishee may rely upon the information as to the termination date of the duty of support of any individual claimed in the affidavit of garnishment, the amount of the duty of periodic support to be paid, any sums paid by the defendant between the date of the filing of the plaintiff's affidavit and the date of the initial garnishee answer, and the amount of the original arrearage existing as of the date of the affidavit of garnishment, unless the same are traversed by the defendant and the court enters any finding otherwise. (Code 1981, § 18-4-135, enacted by Ga. L. 1985, p. 785, § 2; Ga. L. 2012, p. 2, § 17/HB 683.)

The 2012 amendment, effective February 7, 2012, substituted “garnishee answer” for “answer of the garnishee” near

the middle of the second sentence of this Code section.

CHAPTER 5

DEBT ADJUSTMENT

18-5-1. Definitions.

JUDICIAL DECISIONS

Forum selection provision invalid when denying debtor rights. — Trial court erred in granting a Texas corporation's motion to dismiss a debtors' action alleging that the debt adjustment services a Texas corporation provided them violated Georgia statutes specifically regulating the business of “debt adjusting” as set forth in O.C.G.A. § 18-5-1 et seq. on the ground that the parties' contract contained a provision selecting Texas as the forum for any dispute because, if enforced, the contract's forum selection and choice of law provisions requiring the debtors to bring their action before a Texas court

applying Texas law would operate in tandem to deprive the debtors of specific statutory protections set forth in § 18-5-1 et seq., relating to debt adjustment agreements; because that would violate Georgia's public policy established in those provisions the forum selection and choice of law provisions in the contract were invalid and unenforceable. *Moon v. CSA--Credit Solutions of Am., Inc.*, 304 Ga. App. 555, 696 S.E.2d 486 (2010).

Cited in *Penso Holdings, Inc. v. Cleveland*, 324 Ga. App. 259, 749 S.E.2d 821 (2013).

TITLE 19

DOMESTIC RELATIONS

Chap.

3. Marriage Generally, 19-3-1 through 19-3-68.
6. Alimony and Child Support, 19-6-1 through 19-6-53.
7. Parent and Child Relationship Generally, 19-7-1 through 19-7-54.
8. Adoption, 19-8-1 through 19-8-43.
9. Child Custody Proceedings, 19-9-1 through 19-9-129.
- 10A. Safe Place for Newborns, 19-10A-1 through 19-10A-7.
11. Enforcement of Duty of Support, 19-11-1 through 19-11-191.
13. Family Violence, 19-13-1 through 19-13-56.
15. Child Abuse, 19-15-1 through 19-15-7.

CHAPTER 2

DOMICILE

19-2-1. Place of domicile; how domicile changed, generally.

JUDICIAL DECISIONS

“Residence” and “domicile”, etc.

Trial court erred in finding that venue was proper in Effingham County, Georgia because the defendant, who maintained residences in both Effingham County and Chatham County, Georgia, was domiciled in Chatham County. *Oglesby v. Deal*, 311 Ga. App. 622, 716 S.E.2d 749 (2011).

Change of domicile not shown. — Trial court did not err when the court denied the father’s motion to move a child custody action from Gwinnett County to

DeKalb County because the father had not proved domicile in DeKalb County; while the father testified that the father moved to DeKalb County, the father’s driver’s license showed a Gwinnett County address eight months later and the father had not notified the father’s homeowner’s insurance company or the Internal Revenue Service of the move. *Goyal v. Fifadara*, 324 Ga. App. 567, 751 S.E.2d 190 (2013).

CHAPTER 3

MARRIAGE GENERALLY

Article 2	Sec.	
License and Ceremony		ease; information to be provided.
Sec.	19-3-41.	Marriage manual; preparation by Department of Public Health; distribution at issuance of license; rules and regulations.
19-3-35.1. AIDS brochures; listing of HIV test sites; acknowledgment of receipt.		
19-3-40. Blood test for sickle cell dis-		

Cross references. — Recognition of marriage, Ga. Const. 1983, Art. I, Sec. IV. Lawrence, and Liberty,” see 27 Ga. St. U.L. Rev. 609 (2011).

Law reviews. — For article, “Lochner,

ARTICLE 1

GENERAL PROVISIONS

19-3-1.1. Common-law marriage; effectiveness.

JUDICIAL DECISIONS

Evidence of common law marriage. — Trial court did not err in admitting evidence regarding the conduct of a common law husband and a common law wife after moving to Georgia because although the parties’ cohabitation and public recognition of their marriage in Georgia could not establish a common-law marriage, those facts could corroborate other evidence of a prior agreement to marry entered into in Alabama. Norman v. Ault, 287 Ga. 324, 695 S.E.2d 633 (2010).

Common law marriage found. — Jury was authorized to conclude that a common law marriage existed between a common law husband and a common law wife because the evidence satisfied enough of the criteria generally indicative of public recognition to determine that the husband assented to the marriage in another state; three years after the husband’s divorce, the wife began living in Alabama in the same home as him, sharing a bedroom, and doing housework, the parties would tell people that the other was his or her spouse, and the husband would tell the wife all the time that “in God’s eyes, you are my wife,” the husband had sexual relations only with the wife, and before the parties moved to Georgia, the husband executed a deed filed in Alabama conveying property to himself, his daughter, and his wife. Norman v. Ault, 287 Ga. 324, 695 S.E.2d 633 (2010).

19-3-2. Who may contract marriage; parental consent.

JUDICIAL DECISIONS

ANALYSIS

PREVIOUS UNDISCLOSED MARRIAGE

Previous Undisclosed Marriage

Setting aside divorce decree when marriage void from inception. — Trial court erred by denying an ex-husband's motion to set aside a divorce decree with the ex-wife because the marriage was void

from the marriage's inception due to the ex-wife having a living spouse from an undissolved marriage at the time and there was no issue of the protection of a child to prevent the decree from being set aside. *Wright v. Hall*, 292 Ga. 457, 738 S.E.2d 594 (2013).

19-3-5. What marriages void; legitimacy of issue; effect of later ratification.

JUDICIAL DECISIONS

No children from marriage void from inception. — Trial court erred by denying an ex-husband's motion to set aside a divorce decree with the ex-wife because the marriage was void from the marriage's inception due to the ex-wife

having a living spouse from an undissolved marriage at the time and there was no issue of the protection of a child to prevent the decree from being set aside. *Wright v. Hall*, 292 Ga. 457, 738 S.E.2d 594 (2013).

19-3-6. Effect of restraints on marriage; when valid.

JUDICIAL DECISIONS

Statute has nothing to do with adoption standards. — Public policy of the state as enunciated by the General Assembly is to consider the best interest of the child when determining whether he or she should be adopted, O.C.G.A. § 19-8-18(b); in stating that marriage is encouraged, O.C.G.A. § 19-3-6 forbids most efforts to restrain or discourage marriage by contract, condition, limitation, or otherwise, and § 19-3-6 has nothing to do with the standards the courts must apply in determining whether to allow a child to be adopted. *In re Goudeau*, 305 Ga. App. 718, 700 S.E.2d 688 (2010).

Meretricious relationship defense did not apply to a promise to marry. — Because the object of a promise to marry was not illegal or against public policy, O.C.G.A. § 19-3-6, the fact that a man and woman were living together before and after a marriage proposal was only collateral to the promise to marry, and the meretricious relationship defense provided by O.C.G.A. § 13-8-1 was inapplicable to the promise to marry. *Kelley v. Cooper*, 325 Ga. App. 145, 751 S.E.2d 889 (2013).

19-3-8. Interspousal tort immunity continued.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Requirement to apportion damages did not violate interspousal tort immunity doctrine. — Application of the apportionment of damages pursuant to

O.C.G.A. § 51-12-33 did not violate the interspousal tort immunity doctrine, O.C.G.A. § 19-3-8, because the trial court's holding that the jury should have been instructed to apportion the award of damages to a wife according to the jury's

General Consideration (Cont'd)

determination of the percentage of fault of her husband and a driver, if any, in no way requires the wife to file suit against her husband, but instead, precluded the wife

from recovering from the driver that portion of her damages, if any, that a trier of fact concluded resulted from the negligence of her husband. *Barnett v. Farmer*, 308 Ga. App. 358, 707 S.E.2d 570 (2011).

19-3-9. Each spouse's property separate.

JUDICIAL DECISIONS

Bankruptcy exemptions. — When husband and wife debtors sought to exempt their income tax refunds, pursuant to O.C.G.A. § 44-13-100(a)(6), the procedure set forth in *In re Crowson*, 431 B.R. 484, 489 (10th Cir. B.A.P. 2010) was to be followed. Each debtor was treated separately under 11 U.S.C. § 522(m), and Georgia law had no presumption of equal ownership of property between spouses under O.C.G.A. § 19-3-9. *In re Evans*, 449 B.R. 827 (Bankr. N.D. Ga. 2010).

Retention of tax refund by Chapter 7 debtors. — Chapter 7 debtors could not retain total tax refunds because, pursuant to Georgia law, which—pursuant to O.C.G.A. § 19-3-9—had no presumption of equal ownership of property between spouses, the refund in its entirety was the sole property of the sole income earner at the time of the bankruptcy filing. *In re Hraga*, 467 B.R. 527 (Bankr. N.D. Ga. 2011).

RESEARCH REFERENCES

ALR. — Inherited property as marital or separate property in divorce action, 38 ALR6th 313.

Divorce and separation: appreciation in value of separate property during mar-

riage with contribution by either spouse as separate or community property (doctrine of “active appreciation”), 39 ALR6th 205.

ARTICLE 2

LICENSE AND CEREMONY

19-3-30. Issuance, return, and recording of license.

Law reviews. — For comment, “By the Power Vested in Me? Licensing Religious Officials to Solemnize Marriage in the Age

of Same-Sex Marriage,” see 63 *Emory L. J.* 979 (2014).

19-3-35.1. AIDS brochures; listing of HIV test sites; acknowledgment of receipt.

(a) Any term used in this Code section and defined in Code Section 31-22-9.1 shall have the meaning provided for such term in Code Section 31-22-9.1.

(b) The Department of Public Health shall prepare a brochure describing AIDS, HIV, and the dangers, populations at risk, risk behaviors, and prevention measures relating thereto. That department

shall also prepare a listing of sites at which confidential and anonymous HIV tests are provided without charge. That department shall further prepare a form for acknowledging that the brochures and listings have been received, as required by subsection (c) of this Code section. The brochures, listings, and forms prepared by the Department of Public Health (formerly known as the Department of Human Resources for these purposes) under this subsection shall be prepared and furnished to the office of each judge of the probate court no later than October 1, 1988.

(c) On and after October 1, 1988, each person who makes application for a marriage license shall receive from the office of the probate judge at the time of the application the AIDS brochure and listing of HIV test sites prepared and furnished pursuant to subsection (b) of this Code section. On and after October 1, 1988, no marriage license shall be issued unless both the proposed husband and the proposed wife sign a form acknowledging that both have received the brochure and listing. (Code 1981, § 19-3-35.1, enacted by Ga. L. 1988, p. 1799, § 5; Ga. L. 2009, p. 453, § 1-16/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in the first and last sentences of subsection (b).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

19-3-40. Blood test for sickle cell disease; information to be provided.

(a) As used in this Code section, the term “blood test for sickle cell disease” means a blood test for sickle cell anemia, sickle cell trait, and other detectable abnormal hemoglobin.

(b) The Department of Public Health shall prepare information for public dissemination on the department’s website describing the importance of obtaining a blood test for sickle cell disease and explaining the causes and effects of such disease. Such information shall recommend that each applicant applying for a marriage license obtain a blood test for sickle cell disease prior to obtaining a marriage license. Such information may also be provided as a brochure or other document. The department shall make such information available in electronic format to the probate courts of this state which shall disseminate such information to all persons applying for marriage licenses. (Code 1981, § 19-3-40, enacted by Ga. L. 2009, p. 314, § 1/HB 184; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in the first sentence of subsection (b).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

19-3-41. Marriage manual; preparation by Department of Public Health; distribution at issuance of license; rules and regulations.

(a) The Department of Public Health shall prepare a marriage manual for distribution by the judge of the probate court or his clerk to all applicants for a marriage license. The manual shall include, but shall not be limited to, material on family planning.

(b) The manual provided for in subsection (a) of this Code section shall be issued by the judge of the probate court or his clerk to applicants for a marriage license at the same time the marriage license is issued.

(c) The Department of Public Health shall promulgate rules and regulations to implement this Code section.

(d) In order to be nonsectarian, the manual will include resource referral information for those who might have questions regarding religious beliefs in the areas covered by the marriage manual. (Code 1933, § 53-201.1, enacted by Ga. L. 1973, p. 879, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in the first sentence of subsection (a) and in subsection (c).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

19-3-46. Forfeiture for officiating at marriage without license or banns.

Law reviews. — For comment, “By the Power Vested in Me? Licensing Religious Officials to Solemnize Marriage in the Age

of Same-Sex Marriage,” see 63 Emory L. J. 979 (2014).

19-3-48. Penalty for officiating at illegal marriage ceremony.

Law reviews. — For comment, “By the Power Vested in Me? Licensing Religious Officials to Solemnize Marriage in the Age

of Same-Sex Marriage,” see 63 Emory L. J. 979 (2014).

ARTICLE 3

MARRIAGE ARTICLES, CONTRACTS, AND SETTLEMENTS

19-3-63. Construction of marriage contract; attestation.

Law reviews. — For annual survey of law on domestic relations, see 62 Mercer L. Rev. 105 (2010).

JUDICIAL DECISIONS

Requirement for two signatures enforced.

Parties’ premarital agreement, viewed as a whole, was a marriage contract made in contemplation of marriage, not a pre-nuptial agreement made in anticipation of

divorce, and the trial court therefore correctly denied enforcement of the agreement due to noncompliance with the attestation requirement of O.C.G.A. § 19-3-63. Fox v. Fox, 291 Ga. 492, 731 S.E.2d 676 (2012).

CHAPTER 4

ANNULMENT OF MARRIAGE

19-4-1. When annulments may be granted.

JUDICIAL DECISIONS

Setting aside divorce decree when marriage void from inception. — Trial court erred by denying an ex-husband’s motion to set aside a divorce decree with the ex-wife because the marriage was void from the marriage’s inception due to the

ex-wife having a living spouse from an undissolved marriage at the time and there was no issue of the protection of a child to prevent the decree from being set aside. Wright v. Hall, 292 Ga. 457, 738 S.E.2d 594 (2013).

19-4-2. Right to file for annulment or divorce.

JUDICIAL DECISIONS

Setting aside divorce decree when marriage void from inception. — Trial court erred by denying an ex-husband’s motion to set aside a divorce decree with the ex-wife because the marriage was void from the marriage’s inception due to the

ex-wife having a living spouse from an undissolved marriage at the time and there was no issue of the protection of a child to prevent the decree from being set aside. Wright v. Hall, 292 Ga. 457, 738 S.E.2d 594 (2013).

CHAPTER 5

DIVORCE

Law reviews. — For article, “The Renewed Significance of Title in Dividing Marital Assets,” see 16 (No. 6) Ga. St. B.J. 24 (2011).

19-5-2. Residence requirements; venue.

JUDICIAL DECISIONS

Husband established that he was Georgia domiciliary.

Even though the wife did not have sufficient minimum contacts with Georgia for the trial court to exercise jurisdiction over issues related to alimony, division of marital property, and attorney fees, the trial court had jurisdiction pursuant to O.C.G.A. § 19-5-2 to grant the divorce sought by the husband since the husband had lived in Georgia for at least six months. *Ennis v. Ennis*, 290 Ga. 890, 725 S.E.2d 311 (2012).

Domicile in Georgia. — Trial court had jurisdiction to grant a divorce, as opposed to the State of New York trial court wherein the wife petitioned for a divorce, because there was some evidence to support the trial court’s findings on domicile of the parties, including that the husband was stationed in the military in Georgia, they lived in military housing then purchased a home, and continued to live in that home until their separation. *Black v. Black*, 292 Ga. 691, 740 S.E.2d 613 (2013).

19-5-13. Disposition of property in accordance with verdict.

JUDICIAL DECISIONS

Alteration of divorce decree in contempt proceeding.

Trial court erred in holding a husband in contempt for refusing to sign an agreed domestic relations order because the trial court erroneously modified a divorce decree; in supplying the missing percentage allocation of a husband’s military retirement benefits, the trial court did more than construe or clarify imprecise language in the agreement because the trial court eschewed the plain language of the agreement allocating to the wife only such amounts as the Navy would “require” and substituted for that provision a fifty percent allocation. *Morgan v. Morgan*, 288 Ga. 417, 704 S.E.2d 764 (2011).

Equitable division when spouse conveyed property to parent prior to divorce action. — Property which a spouse conveyed by deed to the spouse’s parent before the other spouse filed for a divorce was not subject to equitable division in the divorce action brought by the

other spouse because the other spouse chose to abandon the avenue for recovery that the other spouse initiated to show that the property was still subject to equitable division. *Armour v. Holcombe*, 288 Ga. 50, 701 S.E.2d 169 (2010).

Valuation of property not required. — Considering the lack of any evidence of the value of the maintenance work performed by the husband, the testimony of the wife that he was paid for this work, the fact that the husband used a portion of the property rent-free as a commercial recording studio, and the fact that the property paid for the mortgage through the property’s own rents, the trial court had evidentiary support for the court’s finding that any increased value in the property attributable to the husband’s contributions and the expenditure of marital funds was nominal, and therefore a calculation of the current market value of the property was not needed. As there was ample evidence supporting the court’s con-

clusion, the trial court did not abuse the court’s broad discretion to divide marital property equitably. *Pina v. Pina*, 290 Ga. 878, 725 S.E.2d 301 (2012).

Pension benefits.

In a divorce action, a trial court did not abuse the court’s discretion in declining to apply the doctrine of judicial estoppel to defeat the wife’s claim to any share of her retirement accounts because the husband failed to show that the wife’s retirement accounts were not excludable or exempt from the bankruptcy estate under 11 U.S.C. § 522(d)(12). *Klardie v. Klardie*, 287 Ga. 499, 697 S.E.2d 207 (2010).

At least some evidence supported the jury’s determination that the husband’s Individual Retirement Account (IRA) was the husband’s separate property because as the final arbiter of questions of fact and witness credibility, the jury was free to reject portions of the husband’s testimony and conclude from the remaining evidence that the particular IRA in the husband’s name could in fact have remained separate property. *Curran v. Scharpf*, 290 Ga. 780, 726 S.E.2d 407 (2012).

RESEARCH REFERENCES

ALR. — Inherited property as marital or separate property in divorce action, 38 ALR6th 313.

Divorce and separation: appreciation in value of separate property during mar-

riage with contribution by either spouse as separate or community property (doctrine of “active appreciation”), 39 ALR6th 205.

CHAPTER 6

ALIMONY AND CHILD SUPPORT

Article 1

General Provisions

Sec.
19-6-15. Child support in final verdict or decree; guidelines for determining amount of award; continuation of duty to provide support; duration of support.

Article 2

Georgia Child Support Commission

Sec.
19-6-53. Duties; powers; authorization to retain professional services.

ARTICLE 1

GENERAL PROVISIONS

19-6-1. Alimony defined; when authorized; how determined; lien on estate of party dying prior to order; certain changes in parties’ assets prohibited pending determination.

Law reviews. — For annual survey of law on domestic relations, see 62 Mercer L. Rev. 105 (2010).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
FACTORS TO BE CONSIDERED

General Consideration

Challenge to constitutionality. — Pro se litigant sued government and court officials alleging Georgia's alimony provisions, O.C.G.A. § 19-6-1 et seq., violated: (1) the right to privacy, protections of the equal protection clause, and prohibitions against involuntary servitude as contained in the U.S. Constitution; and (2) the right to privacy, due process provisions, equal protection provisions, privileges and immunities clause, prohibitions on involuntary servitude, and prohibitions against legislation based on social status as guaranteed by the Georgia Constitution. However, the federal court determined that the plaintiff must raise these constitutional challenges as part of the litigant's state divorce proceedings, and, furthermore, that Georgia had an important state interest in enforcing these provisions. *Cormier v. Green*, 2005 U.S. App. LEXIS 14034 (11th Cir. July 12, 2005) (Unpublished).

Alimony award proper.

Trial court did not abuse the court's discretion in setting alimony at \$1,250 per month, pursuant to O.C.G.A. §§ 19-6-1(c) and 19-6-5(a), because the trial court properly considered, inter alia, the value

of the husband's pension, the overwhelming marital debt, the husband's contribution of inherited assets to the marriage, and the wife's recent promotion, accompanied by a raise in salary and benefits. *Hammond v. Hammond*, 290 Ga. 518, 722 S.E.2d 729 (2012).

Factors to Be Considered

Necessities of spouse entitled to alimony, and spouse's ability to pay alimony, etc.

Trial court did not err in awarding a wife \$200,000 in lump-sum alimony, to be paid in monthly installments of \$3,500 for five years because the record contained some evidence supporting the court's finding that the husband could pay the alimony awarded and that the wife needed it in as much as the husband was capable of earning a minimum of \$150,000 per year, lived with a girlfriend, and had virtually no living expenses, and the wife was forced to leave the marital residence due to its foreclosure, worked part-time as a waitress and was enrolled in college, and struggled with tuition payments as well as day-to-day living expenses. *Driver v. Driver*, 292 Ga. 800, 741 S.E.2d 631 (2013).

19-6-2. Attorney's fees; when granted; grant of final judgment; how enforced; action by attorney.

Law reviews. — For annual survey on domestic relations, see 65 Mercer L. Rev. 107 (2013).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
ATTORNEY'S FEES
CONTEMPT

General Consideration

Cited in *Harris v. Williams*, 304 Ga. App. 390, 696 S.E.2d 131 (2010); *Baars v. Freeman*, 288 Ga. 835, 708 S.E.2d 273 (2011); *Avren v. Garten*, 289 Ga. 186, 710 S.E.2d 130 (2011).

Attorney's Fees

Consideration of parties' financial circumstances.

There was no abuse of discretion in a trial court's denial of attorney fees to either party pursuant to O.C.G.A. § 19-6-2(a)(1) in their divorce action as the trial court properly based the court's determination upon consideration of the parties' relative financial positions; the husband could not seek attorney fees under O.C.G.A. § 13-6-11. *Sponsler v. Sponsler*, 287 Ga. 725, 699 S.E.2d 22 (2010).

In a divorce proceeding, a trial court's failure to award attorney's fees to a former spouse under O.C.G.A. § 19-6-2 was not an abuse of discretion as the trial court properly considered the relative financial positions of the parties. *Hunter v. Hunter*, 289 Ga. 9, 709 S.E.2d 263 (2011).

In an appeal pursuant to Ga. Sup. Ct. R. 34(4), a trial court did not abuse the court's discretion by considering evidence that the husband and wife received financial assistance from a close relative (their respective mothers) since there was no statutory limitation on the type of evidence of financial circumstances a trial court may consider when a trial court makes an attorney's fee award under O.C.G.A. § 19-6-2 and because the award of fees under § 19-6-2 was within the trial court's discretion. *Jarvis v. Jarvis*, 291 Ga. 818, 733 S.E.2d 747 (2012).

Attorney fees for separate litigation.

Bankruptcy court denied a Chapter 13 debtor's ex-wife's request for reimbursement of attorneys' fees she incurred to obtain a judgment against the debtor which found that a state court's award of attorneys' fees in her divorce action was a debt in the nature of support that was nondischargeable under 11 U.S.C. § 523(a)(5) and was entitled to priority under 11 U.S.C. § 507(a)(1). Nothing in

the state court's order awarding the ex-wife attorneys' fees allowed her to recover additional fees for enforcing the order, and there was no merit to the ex-wife's claims that she was entitled to the additional fees under O.C.G.A. § 19-6-2, and under O.C.G.A. § 9-15-14 because the debtor had acted in bad faith. *Owoade-Taylor v. Babatunde* (In re Babatunde), No. 11-5564, 2012 Bankr. LEXIS 5053 (Bankr. N.D. Ga. Oct. 10, 2012).

Insufficient grounds for court's award.

Trial court erred in awarding a husband attorney fees because the court merely ordered the wife to pay attorney fees to the husband without findings of fact and without any cogent evidence of the work performed by the husband's counsel and the nature thereof. *Holloway v. Holloway*, 288 Ga. 147, 702 S.E.2d 132 (2010).

Insufficient evidence regarding reasonableness of fees. — In a contempt proceeding and modification of visitation following a finding that a mother had repeatedly refused to allow a father visitation, an award of attorney's fees to the father was not supported by any testimony regarding the reasonableness of the fees, and no statutory basis was specified, requiring reversal. *Weeks v. Weeks*, 324 Ga. App. 785, 751 S.E.2d 575 (2013).

Attorney's fees award proper.

Record did not support a husband's claim that the trial court made an attorney fees award because the court thought it was improper for a man to seek alimony and that the case should have settled because the trial court specifically set forth in the divorce decree that in denying alimony, the court considered the conditions of the parties and that rehabilitative alimony to the husband was not warranted since the request was premised on his less-than-credible claim that the wife had agreed with his lack of employment and his being a stay-at-home parent; as to the award of fees in favor of the wife, the trial court expressly considered the parties' fiscal circumstances as the court was obligated to do under O.C.G.A. § 19-6-2(a)(1). *Klardie v. Klardie*, 287 Ga. 499, 697 S.E.2d 207 (2010).

Trial court's award of \$60,000 attorney's

Attorney's Fees (Cont'd)

fees to a wife under O.C.G.A. § 9-15-14 was upheld based on the trial court's order, which recounted several instances of the husband's misconduct during the litigation and found that they caused numerous delays, extra motions, and extra conversations, and forced the wife's counsel to make multiple requests for documents and answers and to go to otherwise unnecessary efforts to obtain needed documents. The award was also proper under O.C.G.A. § 19-6-2(a)(1) to ensure effective representation of both spouses. *Miller v. Miller*, 288 Ga. 274, 705 S.E.2d 839 (2010).

Trial court did not abuse the court's discretion in awarding a wife attorney fees because the court considered the relative financial positions of the wife and the husband, and although the final judgment and decree did not cite a statutory basis for the attorney fee award, that omission did not mean that the basis of the award was in question; the award was made pursuant to O.C.G.A. § 19-6-2 because no motion for attorney fees was made pursuant to O.C.G.A. § 9-15-14, and there was no indication that the trial court considered an award of attorney fees on that basis. *Simmons v. Simmons*, 288 Ga. 670, 706 S.E.2d 456 (2011).

Trial court did not err in awarding the wife attorney fees without citing to O.C.G.A. § 19-6-2 as there was no requirement that the statute be cited in the trial court's order and there was evidence that the wife's counsel charged a reasonably hourly rate for a family law attorney with the attorney's training and experience. *Horn v. Shepherd*, 292 Ga. 14, 732 S.E.2d 427 (2012).

Contempt**Action for contempt and modification of support and visitation.**

Award of attorneys' fees to the mother was proper because evidence was presented regarding the reasonableness of the fees and expenses requested and the fee was predicated on the finding of contempt. *Vines v. Vines*, 292 Ga. 550, 739 S.E.2d 374 (2013).

Attorney fees in contempt proceeding.

Because the father was prohibited in filing the counterclaim for contempt and the trial court was not authorized to consider it, the trial court was also not authorized to order the mother to pay the father's attorney fees resulting therefrom. *Mullins-Leholm v. Evans*, 322 Ga. App. 869, 746 S.E.2d 628 (2013).

19-6-5. Factors in determining amount of alimony; effect of remarriage on obligations for alimony.

Law reviews. — For annual survey of law on domestic relations, see 62 *Mercer L. Rev.* 105 (2010).

JUDICIAL DECISIONS**ANALYSIS****FACTORS TO BE CONSIDERED****Factors to be Considered****Award of alimony appropriate based on consideration of factors.**

Trial court did not abuse the court's discretion in setting alimony at \$1,250 per month, pursuant to O.C.G.A. §§ 19-6-1(c) and 19-6-5(a), because the trial court properly considered, *inter alia*, the value

of the husband's pension, the overwhelming marital debt, the husband's contribution of inherited assets to the marriage, and the wife's recent promotion, accompanied by a raise in salary and benefits. *Hammond v. Hammond*, 290 Ga. 518, 722 S.E.2d 729 (2012).

19-6-10. Voluntary separation, abandonment, or driving off of spouse — Petition for alimony or child support when no divorce pending — Notice; hearing; order and enforcement; equitable remedies; decree in equity; effect of filing for divorce.

JUDICIAL DECISIONS

ANALYSIS

VOLUNTARY SEPARATION

Voluntary Separation

Action for separate maintenance was separate from divorce action. — Although an action for separate maintenance and an action for divorce both grow out of the marriage relationship and relate to the same subject matter, they have

different purposes and raise different questions. An action for separate maintenance is authorized when spouses are living separately or in a bona fide state of separation and there is no action for divorce pending, pursuant to O.C.G.A. § 19-6-10. *Pampattiwar v. Hinson*, 2014 Ga. App. LEXIS 132 (Mar. 12, 2014).

19-6-14. Child support and custody pending final divorce; effect on liability to third persons for necessities.

JUDICIAL DECISIONS

Cited in *Segars v. State*, 309 Ga. App. 732, 710 S.E.2d 916 (2011).

19-6-15. Child support in final verdict or decree; guidelines for determining amount of award; continuation of duty to provide support; duration of support.

(a) **Definitions.** As used in this Code section, the term:

(1) Reserved.

(2) “Adjusted income” means the determination of a parent’s monthly income, calculated by deducting from that parent’s monthly gross income one-half of the amount of any applicable self-employment taxes being paid by the parent, any preexisting order for current child support which is being paid by the parent, and any theoretical child support order for other qualified children, if allowed by the court. For further reference see paragraph (5) of subsection (f) of this Code section.

(3) “Basic child support obligation” means the monthly amount of support displayed on the child support obligation table which corresponds to the combined adjusted income and the number of children for whom child support is being determined.

(4) “Child” means child or children.

(5) Reserved.

(6) "Child support obligation table" means the chart in subsection (o) of this Code section.

(6.1) "Child support services" means the agency within the Department of Human Services which provides and administers child support services.

(7) "Combined adjusted income" means the amount of adjusted income of the custodial parent added to the amount of adjusted income of the noncustodial parent.

(8) "Court" means a judge of any court of record or an administrative law judge of the Office of State Administrative Hearings.

(9) "Custodial parent" means the parent with whom the child resides more than 50 percent of the time. Where a custodial parent has not been designated or where a child resides with both parents an equal amount of time, the court shall designate the custodial parent as the parent with the lesser support obligation and the other parent as the noncustodial parent. Where the child resides equally with both parents and neither parent can be determined as owing a greater amount than the other, the court shall determine which parent to designate as the custodial parent for the purpose of this Code section.

(10) "Deviation" means an increase or decrease from the presumptive amount of child support if the presumed order is rebutted by evidence and the required findings of fact are made by the court pursuant to subsection (i) of this Code section.

(11) "Final child support order" means the presumptive amount of child support adjusted by any deviations.

(12) "Gross income" means all income to be included in the calculation of child support as set forth in subsection (f) of this Code section.

(13) "Health insurance" means any general health or medical policy. For further reference see paragraph (2) of subsection (h) of this Code section.

(14) "Noncustodial parent" means the parent with whom the child resides less than 50 percent of the time or the parent who has the greater payment obligation for child support. Where the child resides equally with both parents and neither parent can be determined as owing a lesser amount than the other, the court shall determine which parent to designate as the noncustodial parent for the purpose of this Code section.

(15) "Nonparent custodian" means an individual who has been granted legal custody of a child, or an individual who has a legal right to seek, modify, or enforce a child support order.

(16) "Parent" means a person who owes a child a duty of support pursuant to Code Section 19-7-2.

(17) "Parenting time deviation" means a deviation allowed for the noncustodial parent based upon the noncustodial parent's court ordered visitation with the child. For further reference see subsections (g) and (i) of this Code section.

(18) "Preexisting order" means:

(A) An order in another case that requires a parent to make child support payments for another child, which child support the parent is actually paying, as evidenced by documentation as provided in division (f)(5)(B)(iii) of this Code section; and

(B) That the date and time of filing with the clerk of court of the initial order for each such other case is earlier than the date and time of filing with the clerk of court of the initial order in the case immediately before the court, regardless of the age of any child in any of the cases.

(19) "Presumptive amount of child support" means the basic child support obligation including health insurance and work related child care costs.

(20) "Qualified child" or "qualified children" means any child:

(A) For whom the parent is legally responsible and in whose home the child resides;

(B) That the parent is actually supporting;

(C) Who is not subject to a preexisting order; and

(D) Who is not before the court to set, modify, or enforce support in the case immediately under consideration.

Qualified children shall not include stepchildren or other minors in the home that the parent has no legal obligation to support.

(21) "Split parenting" can occur in a child support case only if there are two or more children of the same parents, where one parent is the custodial parent for at least one child of the parents, and the other parent is the custodial parent for at least one other child of the parents. In a split parenting case, each parent is the custodial parent of any child spending more than 50 percent of the time with that parent and is the noncustodial parent of any child spending more than 50 percent of the time with the other parent. A split parenting situation shall have two custodial parents and two noncustodial parents, but no child shall have more than one custodial parent or noncustodial parent.

(22) “Theoretical child support order” means a hypothetical child support order for qualified children calculated as set forth in subparagraph (f)(5)(C) of this Code section which allows the court to determine the amount of child support as if a child support order existed.

(23) “Uninsured health care expenses” means a child’s uninsured medical expenses including, but not limited to, health insurance copayments, deductibles, and such other costs as are reasonably necessary for orthodontia, dental treatment, asthma treatments, physical therapy, vision care, and any acute or chronic medical or health problem or mental health illness, including counseling and other medical or mental health expenses, that are not covered by insurance. For further reference see paragraph (3) of subsection (h) of this Code section.

(24) “Work related child care costs” means expenses for the care of the child for whom support is being determined which are due to employment of either parent. In an appropriate case, the court may consider the child care costs associated with a parent’s job search or the training or education of a parent necessary to obtain a job or enhance earning potential, not to exceed a reasonable time as determined by the court, if the parent proves by a preponderance of the evidence that the job search, job training, or education will benefit the child being supported. The term shall be projected for the next consecutive 12 months and averaged to obtain a monthly amount. For further reference see paragraph (1) of subsection (h) of this Code section.

(25) “Worksheet” or “child support worksheet” means the document used to record information necessary to determine and calculate monthly child support. For further reference see subsection (m) of this Code section.

(b) **Process of calculating child support.** Pursuant to this Code section, the determination of monthly child support shall be calculated as follows:

(1) Determine the monthly gross income of both the custodial parent and the noncustodial parent. Gross income may include imputed income, if applicable. The determination of monthly gross income shall be entered on the Child Support Schedule A — Gross Income;

(2) Adjust each parent’s monthly gross income by deducting the following from the parents’ monthly gross income and entering it on the Child Support Schedule B — Adjusted Income if any of the following apply:

(A) One-half of the amount of self-employment taxes;

(B) Preexisting orders; and

(C) Theoretical child support order for qualified children, if allowed by the court;

(3) Add each parent's adjusted income together;

(4) Locate the basic child support obligation by referring to the child support obligation table. Using the figure closest to the amount of the combined adjusted income, locate the amount of the basic child support obligation. If the combined adjusted income falls between the amounts shown in the table, then the basic child support obligation shall be based on the income bracket most closely matched to the combined adjusted income. The basic child support obligation amount stated in subsection (o) of this Code section shall be rebuttably presumed to be the appropriate amount of child support to be provided by the custodial parent and the noncustodial parent prior to consideration of health insurance, work related child care costs, and deviations;

(5) Calculate the pro rata share of the basic child support obligation for the custodial parent and the noncustodial parent by dividing the combined adjusted income into each parent's adjusted income to arrive at each parent's pro rata percentage of the basic child support obligation;

(6) Find the adjusted child support obligation amount by adding the additional expenses of the costs of health insurance and work related child care costs, prorating such expenses in accordance with each parent's pro rata share of the obligation and adding such expenses to the pro rata share of the basic child support obligation. The monthly cost of health insurance premiums and work related child care costs shall be entered on the Child Support Schedule D — Additional Expenses. The pro rata share of the monthly basic child support obligation and the pro rata share of the combined additional expenses shall be added together to create the monthly adjusted child support obligation;

(7) Determine the amount of child support for the custodial parent and the noncustodial parent resulting in a monthly sum certain payment due to the custodial parent by assigning or deducting credit for actual payments for health insurance and work related child care costs from the basic child support obligation;

(8) In accordance with subsection (i) of this Code section, deviations subtracted from or added to the presumptive amount of child support shall be applied, if applicable, and if supported by the required findings of fact and application of the best interest of the child standard. The proposed deviations shall be entered on the Child

Support Schedule E — Deviations. In the court's or the jury's discretion, deviations may include, but shall not be limited to, the following:

- (A) High income;
- (B) Low income;
- (C) Other health related insurance;
- (D) Life insurance;
- (E) Child and dependent care tax credit;
- (F) Travel expenses;
- (G) Alimony;
- (H) Mortgage;
- (I) Permanency plan or foster care plan;
- (J) Extraordinary expenses;
- (K) Parenting time; and
- (L) Nonspecific deviations;

(9) Any benefits which the child receives under Title II of the federal Social Security Act shall be applied against the final child support order. The final child support amount for each parent shall be entered on the child support worksheet, together with the information from each of the utilized schedules;

(10) The parents shall allocate the uninsured health care expenses which shall be based on the pro rata responsibility of the parents or as otherwise ordered by the court. Each parent's pro rata responsibility for uninsured health care expenses shall be entered on the child support worksheet; and

(11) In a split parenting case, there shall be a separate calculation and final child support order for each parent.

(c) Applicability and required findings.

(1) The child support guidelines contained in this Code section are a minimum basis for determining the amount of child support and shall apply as a rebuttable presumption in all legal proceedings involving the child support responsibility of a parent. This Code section shall be used when the court enters a temporary or permanent child support order in a contested or noncontested hearing or order in a civil action filed pursuant to Code Section 19-13-4. The rebuttable presumptive amount of child support provided by this Code section may be increased or decreased according to the best

interest of the child for whom support is being considered, the circumstances of the parties, the grounds for deviation set forth in subsection (i) of this Code section, and to achieve the state policy of affording to children of unmarried parents, to the extent possible, the same economic standard of living enjoyed by children living in intact families consisting of parents with similar financial means.

(2) The provisions of this Code section shall not apply with respect to any divorce case in which there are no minor children, except to the limited extent authorized by subsection (e) of this Code section. In the final judgment or decree in a divorce case in which there are minor children, or in other cases which are governed by the provisions of this Code section, the court shall:

(A) Specify in what sum certain amount and from which parent the child is entitled to permanent support as determined by use of the worksheet;

(B) Specify as required by Code Section 19-5-12 in what manner, how often, to whom, and until when the support shall be paid;

(C) Include a written finding of the parent's gross income as determined by the court or the jury;

(D) Determine whether health insurance for the child involved is reasonably available at a reasonable cost to either parent. If the health insurance is reasonably available at a reasonable cost to the parent, then the court shall order that the child be covered under such health insurance;

(E) Include written findings of fact as to whether one or more of the deviations allowed under this Code section are applicable, and if one or more such deviations are applicable as determined by the court or the jury, the written findings of fact shall further set forth:

(i) The reasons the court or the jury deviated from the presumptive amount of child support;

(ii) The amount of child support that would have been required under this Code section if the presumptive amount of child support had not been rebutted; and

(iii) A finding that states how the court's or the jury's application of the child support guidelines would be unjust or inappropriate considering the relative ability of each parent to provide support and how the best interest of the child who is subject to the child support determination is served by deviation from the presumptive amount of child support;

(F) Specify the amount of the noncustodial parent's parenting time as set forth in the order of visitation;

(G) Include a written finding regarding the use of benefits received under Title II of the federal Social Security Act in the calculation of the amount of child support; and

(H) Specify the percentage of uninsured health care expenses for which each parent shall be responsible.

(3) When child support is ordered, the party who is required to pay the child support shall not be liable to third persons for necessities furnished to the child embraced in the judgment or decree.

(4) In all cases, the parties shall submit to the court their worksheets and schedules and the presence or absence of other factors to be considered by the court pursuant to the provisions of this Code section.

(5) In any case in which the gross income of the custodial parent and the noncustodial parent is determined by a jury, the court shall charge the provisions of this Code section applicable to the determination of gross income. The jury shall be required to return a special interrogatory determining gross income. The court shall determine adjusted income, health insurance costs, and work related child care costs. Based upon the jury's verdict as to gross income, the court shall determine the presumptive amount of child support in accordance with the provisions of this Code section. The court shall inform the jury of the presumptive amount of child support and the identity of the custodial and noncustodial parents. In the final instructions to the jury, the court shall charge the provisions of this Code section applicable to the determination of deviations and the jury shall be required to return a special interrogatory as to deviations and the final award of child support. The court shall include its findings and the jury's verdict on the child support worksheet in accordance with this Code section and Code Section 19-5-12.

(6) Nothing contained within this Code section shall prevent the parties from entering into an enforceable agreement contrary to the presumptive amount of child support which may be made the order of the court pursuant to review by the court of the adequacy of the child support amounts negotiated by the parties, including the provision for medical expenses and health insurance; provided, however, that if the agreement negotiated by the parties does not comply with the provisions contained in this Code section and does not contain findings of fact as required to support a deviation, the court shall reject such agreement.

(7) In any case filed pursuant to Chapter 11 of this title, relating to the "Child Support Recovery Act," the "Uniform Reciprocal Enforcement of Support Act," or the "Uniform Interstate Family Support Act," the court shall make all determinations of fact, including gross

income and deviations, and a jury shall not hear any issue related to such cases.

(d) **Nature of guidelines; court's discretion.** In the event of a hearing or trial on the issue of child support, the guidelines enumerated in this Code section are intended by the General Assembly to be guidelines only and any court so applying these guidelines shall not abrogate its responsibility in making the final determination of child support based on the evidence presented to it at the time of the hearing or trial.

(e) **Duration of child support responsibility.** The duty to provide support for a minor child shall continue until the child reaches the age of majority, dies, marries, or becomes emancipated, whichever first occurs; provided, however, that, in any temporary, final, or modified order for child support with respect to any proceeding for divorce, separate maintenance, legitimacy, or paternity entered on or after July 1, 1992, the court, in the exercise of sound discretion, may direct either or both parents to provide financial assistance to a child who has not previously married or become emancipated, who is enrolled in and attending a secondary school, and who has attained the age of majority before completing his or her secondary school education, provided that such financial assistance shall not be required after a child attains 20 years of age. The provisions for child support provided in this subsection may be enforced by either parent, by any nonparent custodian, by a guardian appointed to receive child support for the child for whose benefit the child support is ordered, or by the child for whose benefit the child support is ordered.

(f) **Gross income.**

(1) **Inclusion to gross income.**

(A) **Attributable income.** Gross income of each parent shall be determined in the process of setting the presumptive amount of child support and shall include all income from any source, before deductions for taxes and other deductions such as preexisting orders for child support and credits for other qualified children, whether earned or unearned, and includes, but is not limited to, the following:

- (i) Salaries;
- (ii) Commissions, fees, and tips;
- (iii) Income from self-employment;
- (iv) Bonuses;
- (v) Overtime payments;

- (vi) Severance pay;
- (vii) Recurring income from pensions or retirement plans including, but not limited to, United States Department of Veterans Affairs, Railroad Retirement Board, Keoghs, and individual retirement accounts;
- (viii) Interest income;
- (ix) Dividend income;
- (x) Trust income;
- (xi) Income from annuities;
- (xii) Capital gains;
- (xiii) Disability or retirement benefits that are received from the Social Security Administration pursuant to Title II of the federal Social Security Act;
- (xiv) Disability benefits that are received pursuant to the federal Veterans' Benefits Act of 2010, 38 U.S.C. Section 101, et seq.;
- (xv) Workers' compensation benefits, whether temporary or permanent;
- (xvi) Unemployment insurance benefits;
- (xvii) Judgments recovered for personal injuries and awards from other civil actions;
- (xviii) Gifts that consist of cash or other liquid instruments, or which can be converted to cash;
- (xix) Prizes;
- (xx) Lottery winnings;
- (xxi) Alimony or maintenance received from persons other than parties to the proceeding before the court;
- (xxii) Assets which are used for the support of the family; and
- (xxiii) Other income.

(B) **Self-employment income.** Income from self-employment includes income from, but not limited to, business operations, work as an independent contractor or consultant, sales of goods or services, and rental properties, less ordinary and reasonable expenses necessary to produce such income. Income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership, limited liability company, or closely held corporation is defined as gross receipts minus ordinary

and reasonable expenses required for self-employment or business operations. Ordinary and reasonable expenses of self-employment or business operations necessary to produce income do not include:

(i) Excessive promotional, travel, vehicle, or personal living expenses, depreciation on equipment, or costs of operation of home offices; or

(ii) Amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses, investment tax credits, or any other business expenses determined by the court or the jury to be inappropriate for determining gross income.

In general, income and expenses from self-employment or operation of a business should be carefully reviewed by the court or the jury to determine an appropriate level of gross income available to the parent to satisfy a child support obligation. Generally, this amount will differ from a determination of business income for tax purposes.

(C) **Fringe benefits.** Fringe benefits for inclusion as income or “in kind” remuneration received by a parent in the course of employment, or operation of a trade or business, shall be counted as income if the benefits significantly reduce personal living expenses. Such fringe benefits might include, but are not limited to, use of a company car, housing, or room and board. Fringe benefits shall not include employee benefits that are typically added to the salary, wage, or other compensation that a parent may receive as a standard added benefit, including, but not limited to, employer paid portions of health insurance premiums or employer contributions to a retirement or pension plan.

(D) **Variable income.** Variable income such as commissions, bonuses, overtime pay, military bonuses, and dividends shall be averaged by the court or the jury over a reasonable period of time consistent with the circumstances of the case and added to a parent’s fixed salary or wages to determine gross income. When income is received on an irregular, nonrecurring, or one-time basis, the court or the jury may, but is not required to, average or prorate the income over a reasonable specified period of time or require the parent to pay as a one-time support amount a percentage of his or her nonrecurring income, taking into consideration the percentage of recurring income of that parent.

(E) **Military compensation and allowances.** Income for a parent who is an active duty member of the regular or reserve component of the United States armed forces, the United States Coast Guard, the merchant marine of the United States, the

commissioned corps of the Public Health Service or the National Oceanic and Atmospheric Administration, the National Guard, or the Air National Guard shall include:

- (i) Base pay;
- (ii) Drill pay;
- (iii) Basic allowance for subsistence, whether paid directly to the parent or received in-kind; and
- (iv) Basic allowance for housing, whether paid directly to the parent or received in-kind, determined at the parent's pay grade at the without dependent rate, but shall include only so much of the allowance that is not attributable to area variable housing costs.

Except as determined by the court or jury, special pay or incentive pay, allowances for clothing or family separation, and reimbursed expenses related to the parent's assignment to a high cost of living location shall not be considered income for the purpose of determining gross income.

(2) **Exclusions from gross income.** Excluded from gross income are the following:

(A) Child support payments received by either parent for the benefit of a child of another relationship;

(B) Benefits received from means-tested public assistance programs such as, but not limited to:

(i) PeachCare for Kids Program, Temporary Assistance for Needy Families Program, or similar programs in other states or territories under Title IV-A of the federal Social Security Act;

(ii) Food stamps or the value of food assistance provided by way of electronic benefits transfer procedures by the Department of Human Services;

(iii) Supplemental security income received under Title XVI of the federal Social Security Act;

(iv) Benefits received under Section 402(d) of the federal Social Security Act for disabled adult children of deceased disabled workers; and

(v) Low-income heating and energy assistance program payments;

(C) Foster care payments paid by the Department of Human Services or a licensed child placing agency for providing foster care

to a foster child in the custody of the Department of Human Services; and

(D) A nonparent custodian's gross income.

(3) Social Security benefits.

(A) Benefits received under Title II of the federal Social Security Act by a child on the obligor's account shall be counted as child support payments and shall be applied against the final child support order to be paid by the obligor for the child.

(B) After calculating the obligor's monthly gross income, including the countable social security benefits as specified in division (1)(A)(xiii) of this subsection, and after calculating the amount of child support, if the presumptive amount of child support, as increased or decreased by deviations, is greater than the social security benefits paid on behalf of the child on the obligor's account, the obligor shall be required to pay the amount exceeding the social security benefit as part of the final child support order in the case.

(C) After calculating the obligor's monthly gross income, including the countable social security benefits as specified in division (1)(A)(xiii) of this subsection, and after calculating the amount of child support, if the presumptive amount of child support, as increased or decreased by deviations, is equal to or less than the social security benefits paid to the nonparent custodian or custodial parent on behalf of the child on the obligor's account, the child support responsibility of that parent shall have been met and no further child support shall be paid.

(D) Any benefit amounts under Title II of the federal Social Security Act as determined by the Social Security Administration sent to the nonparent custodian or custodial parent by the Social Security Administration for the child's benefit which are greater than the final child support order shall be retained by the nonparent custodian or custodial parent for the child's benefit and shall not be used as a reason for decreasing the final child support order or reducing arrearages.

(4) Reliable evidence of income.

(A) **Imputed income.** When establishing the amount of child support, if a parent fails to produce reliable evidence of income, such as tax returns for prior years, check stubs, or other information for determining current ability to pay child support or ability to pay child support in prior years, and the court or the jury has no other reliable evidence of the parent's income or income potential, gross income for the current year shall be determined by imputing gross income based on a 40 hour workweek at minimum wage.

(B) **Modification.** When cases with established orders are reviewed for modification and a parent fails to produce reliable evidence of income, such as tax returns for prior years, check stubs, or other information for determining current ability to pay child support or ability to pay child support in prior years, and the court or jury has no other reliable evidence of such parent's income or income potential, the court or jury may increase the child support of the parent failing or refusing to produce evidence of income by an increment of at least 10 percent per year of such parent's gross income for each year since the final child support order was entered or last modified and shall calculate the basic child support obligation using the increased amount as such parent's gross income.

(C) **Rehearing.** If income is imputed pursuant to subparagraph (A) of this paragraph, the party believing the income of the other party is higher than the amount imputed may provide within 90 days, upon motion to the court, evidence necessary to determine the appropriate amount of child support based upon reliable evidence. A hearing shall be scheduled after the motion is filed. The court may increase, decrease, or leave unchanged the amount of current child support from the date of filing of either parent's initial filing or motion for reconsideration. While the motion for reconsideration is pending, the obligor shall be responsible for the amount of child support originally ordered. Arrearages entered in the original child support order based upon imputed income shall not be forgiven. When there is reliable evidence to support a motion for reconsideration of the amount of income imputed, the party seeking reconsideration shall not be required to prove the existence of grounds for modification of an order pursuant to subsection (k) of this Code section.

(D) **Willful or voluntary unemployment or underemployment.** In determining whether a parent is willfully or voluntarily unemployed or underemployed, the court or the jury shall ascertain the reasons for the parent's occupational choices and assess the reasonableness of these choices in light of the parent's responsibility to support his or her child and whether such choices benefit the child. A determination of willful or voluntary unemployment or underemployment shall not be limited to occupational choices motivated only by an intent to avoid or reduce the payment of child support but can be based on any intentional choice or act that affects a parent's income. In determining willful or voluntary unemployment or underemployment, the court may examine whether there is a substantial likelihood that the parent could, with reasonable effort, apply his or her education, skills, or training to produce income. Specific factors for the court to consider when determining willful or voluntary unemployment or underemployment include, but are not limited to:

- (i) The parent's past and present employment;
- (ii) The parent's education and training;
- (iii) Whether unemployment or underemployment for the purpose of pursuing additional training or education is reasonable in light of the parent's responsibility to support his or her child and, to this end, whether the training or education may ultimately benefit the child in the case immediately under consideration by increasing the parent's level of support for that child in the future;
- (iv) A parent's ownership of valuable assets and resources, such as an expensive home or automobile, that appear inappropriate or unreasonable for the income claimed by the parent;
- (v) The parent's own health and ability to work outside the home; and
- (vi) The parent's role as caretaker of a child of that parent, a disabled or seriously ill child of that parent, or a disabled or seriously ill adult child of that parent, or any other disabled or seriously ill relative for whom that parent has assumed the role of caretaker, which eliminates or substantially reduces the parent's ability to work outside the home, and the need of that parent to continue in the role of caretaker in the future. When considering the income potential of a parent whose work experience is limited due to the caretaker role of that parent, the court shall consider the following factors:
 - (I) Whether the parent acted in the role of full-time caretaker immediately prior to separation by the married parties or prior to the divorce or annulment of the marriage or dissolution of another relationship in which the parent was a full-time caretaker;
 - (II) The length of time the parent staying at home has remained out of the work force for this purpose;
 - (III) The parent's education, training, and ability to work; and
 - (IV) Whether the parent is caring for a child who is four years of age or younger. If the court or the jury determines that a parent is willfully or voluntarily unemployed or underemployed, child support shall be calculated based on a determination of earning capacity, as evidenced by educational level or previous work experience. In the absence of any other reliable evidence, income may be imputed to the parent pursuant to a determination that gross income for the current year is based on a 40 hour workweek at minimum wage.

A determination of willful and voluntary unemployment or underemployment shall not be made when an individual is activated from the National Guard or other armed forces unit or enlists or is drafted for full-time service in the armed forces of the United States.

(5) Adjustments to gross income.

(A) Self-employment. One-half of the self-employment and Medicare taxes shall be calculated as follows:

(i) Six and two-tenths percent of self-employment income up to the maximum amount to which federal old age, survivors, and disability insurance (OASDI) applies; plus

(ii) One and forty-five one-hundredths of a percent of self-employment income for Medicare

and this amount shall be deducted from a self-employed parent's monthly gross income.

(B) Preexisting orders. An adjustment to the parent's monthly gross income shall be made on the Child Support Schedule B — Adjusted Income for current preexisting orders for a period of not less than 12 months immediately prior to the date of the hearing or such period that an order has been in effect if less than 12 months prior to the date of the hearing before the court to set, modify, or enforce child support.

(i) In calculating the adjustment for preexisting orders, the court shall include only those preexisting orders meeting the criteria set forth in subparagraph (a)(18)(B);

(ii) The priority for preexisting orders shall be determined by the date and time of filing with the clerk of court of the initial order in each case. Subsequent modifications of the initial support order shall not affect the priority position established by the date and time of the initial order. In any modification proceeding, the court rendering the decision shall make a specific finding of the date, and time if known, of the initial order of the case;

(iii) Adjustments shall be allowed for current preexisting support only to the extent that the payments are actually being paid as evidenced by documentation including, but not limited to, payment history from a court clerk, the child support services' computer data base, the child support payment history, or canceled checks or other written proof of payments paid directly to the other parent. The maximum credit allowed for a preexisting order is an average of the amount of current support actually

paid under the preexisting order over the past 12 months prior to the hearing date;

(iv) All preexisting orders shall be entered on the Child Support Schedule B — Adjusted Income for the purpose of calculating the total amount of the credit to be included on the child support worksheet; and

(v) Payments being made by a parent on any arrearages shall not be considered payments on preexisting orders or subsequent orders and shall not be used as a basis for reducing gross income.

(C) Theoretical child support orders. In addition to the adjustments to monthly gross income for self-employment taxes provided in subparagraph (A) of this paragraph and for preexisting orders provided in subparagraph (B) of this paragraph, credits for either parent's other qualified child living in the parent's home for whom the parent owes a legal duty of support may be considered by the court for the purpose of reducing the parent's gross income. To consider a parent's other qualified children for determining the theoretical child support order, a parent shall present documentary evidence of the parent-child relationship to the court. Adjustments to income pursuant to this subparagraph may be considered in such circumstances in which the failure to consider a qualified child would cause substantial hardship to the parent; provided, however, that such consideration of an adjustment shall be based upon the best interest of the child for whom child support is being awarded. If the court, in its discretion, decides to apply the qualified child adjustment, the basic child support obligation of the parent for the number of other qualified children living with such parent shall be determined based upon that parent's monthly gross income. Except for self-employment taxes paid, no other amounts shall be subtracted from the parent's monthly gross income when calculating a theoretical child support order under this subparagraph. The basic child support obligation for such parent shall be multiplied by 75 percent and the resulting amount shall be subtracted from such parent's monthly gross income and entered on the Child Support Schedule B — Adjusted Income.

(D) Multiple family situations. In multiple family situations, the priority of adjustments to a parent's monthly gross income shall be calculated in the following order:

(i) Preexisting orders according to the date and time of the initial order as set forth in subparagraph (B) of this paragraph; and

(ii) Application of any credit for a parent's other qualified children using the procedure set forth in subparagraph (C) of this paragraph.

(g) **Parenting time deviation.** The court or the jury may deviate from the presumptive amount of child support as set forth in subparagraph (i)(2)(K) of this Code section.

(h) **Adjusted support obligation.** The child support obligation table does not include the cost of the parent's work related child care costs, health insurance premiums, or uninsured health care expenses. The additional expenses for the child's health insurance premiums and work related child care costs shall be included in the calculations to determine child support. A nonparent custodian's expenses for work related child care costs and health insurance premiums shall be taken into account when establishing a final child support order.

(1) Work related child care costs.

(A) Work related child care costs necessary for the parent's employment, education, or vocational training that are determined by the court to be appropriate, and that are appropriate to the parents' financial abilities and to the lifestyle of the child if the parents and child were living together, shall be averaged for a monthly amount and entered on the child support worksheet in the column of the parent initially paying the expense. Work related child care costs of a nonparent custodian shall be considered when determining the amount of this expense.

(B) If a child care subsidy is being provided pursuant to a means-tested public assistance program, only the amount of the child care expense actually paid by either parent or a nonparent custodian shall be included in the calculation.

(C) If either parent is the provider of child care services to the child for whom support is being determined, the value of those services shall not be an adjustment to the basic child support obligation when calculating the support award.

(D) If child care is provided without charge to the parent, the value of these services shall not be an adjustment to the basic child support obligation. If child care is or will be provided by a person who is paid for his or her services, proof of actual cost or payment shall be shown to the court before the court includes such payment in its consideration.

(E) The amount of work related child care costs shall be determined and added as an adjustment to the basic child support obligation as "additional expenses" whether paid directly by the parent or through a payroll deduction.

(F) The total amount of work related child care costs shall be divided between the parents pro rata to determine the presumptive

amount of child support and shall be included in the worksheet and written order of the court.

(2) Cost of health insurance premiums.

(A)(i) The amount that is, or will be, paid by a parent for health insurance for the child for whom support is being determined shall be an adjustment to the basic child support obligation and prorated between the parents based upon their respective incomes. Payments made by a parent's employer for health insurance and not deducted from the parent's wages shall not be included. When a child for whom support is being determined is covered by a family policy, only the health insurance premium actually attributable to that child shall be added.

(ii) The amount of the cost for the child's health insurance premium shall be determined and added as an adjustment to the basic child support obligation as "additional expenses" whether paid directly by the parent or through a payroll deduction.

(iii) The total amount of the cost for the child's health insurance premium shall be divided between the parents pro rata to determine the total presumptive amount of child support and shall be included in the Child Support Schedule D — Additional Expenses and written order of the court together with the amount of the basic child support obligation.

(B)(i) If either parent has health insurance reasonably available at reasonable cost that provides for the health care needs of the child, then an amount to cover the cost of the premium shall be added as an adjustment to the basic child support obligation. A health insurance premium paid by a nonparent custodian shall be included when determining the amount of health insurance expense. In determining the amount to be added to the order for the health insurance cost, only the amount of the health insurance cost attributable to the child who is the subject of the order shall be included.

(ii) If coverage is applicable to other persons and the amount of the health insurance premium attributable to the child who is the subject of the current action for support is not verifiable, the total cost to the parent paying the premium shall be prorated by the number of persons covered so that only the cost attributable to the child who is the subject of the order under consideration is included. The amount of health insurance premium shall be determined by dividing the total amount of the insurance premium by the number of persons covered by the insurance policy and multiplying the resulting amount by the number of children covered by the insurance policy. The monthly cost of health

insurance premium shall be entered on the Child Support Schedule D — Additional Expenses in the column of the parent paying the premium.

(iii) Eligibility for or enrollment of the child in Medicaid or PeachCare for Kids Program shall not satisfy the requirement that the final child support order provide for the child's health care needs. Health coverage through PeachCare for Kids Program and Medicaid shall not prevent a court from ordering either or both parents to obtain other health insurance.

(3) Uninsured health care expenses.

(A) The child's uninsured health care expenses shall be the financial responsibility of both parents. The final child support order shall include provisions for payment of the uninsured health care expenses; provided, however, that the uninsured health care expenses shall not be used for the purpose of calculating the amount of child support. The parents shall divide the uninsured health care expenses pro rata, unless otherwise specifically ordered by the court.

(B) If a parent fails to pay his or her pro rata share of the child's uninsured health care expenses, as specified in the final child support order, within a reasonable time after receipt of evidence documenting the uninsured portion of the expense:

(i) The other parent or the nonparent custodian may enforce payment of the expense by any means permitted by law; or

(ii) Child support services shall pursue enforcement of payment of such unpaid expenses only if the unpaid expenses have been reduced to a judgment in a sum certain amount.

(i) Grounds for deviation.

(1) General principles.

(A) The amount of child support established by this Code section and the presumptive amount of child support are rebuttable and the court or the jury may deviate from the presumptive amount of child support in compliance with this subsection. In deviating from the presumptive amount of child support, primary consideration shall be given to the best interest of the child for whom support under this Code section is being determined. A nonparent custodian's expenses may be the basis for a deviation.

(B) When ordering a deviation from the presumptive amount of child support, the court or the jury shall consider all available income of the parents and shall make written findings or special interrogatory findings that an amount of child support other than

the amount calculated is reasonably necessary to provide for the needs of the child for whom child support is being determined and the order or special interrogatory shall state:

(i) The reasons for the deviation from the presumptive amount of child support;

(ii) The amount of child support that would have been required under this Code section if the presumptive amount of child support had not been rebutted; and

(iii) How, in its determination:

(I) Application of the presumptive amount of child support would be unjust or inappropriate; and

(II) The best interest of the child for whom support is being determined will be served by deviation from the presumptive amount of child support.

(C) No deviation in the presumptive amount of child support shall be made which seriously impairs the ability of the custodial parent to maintain minimally adequate housing, food, and clothing for the child being supported by the order and to provide other basic necessities, as determined by the court or the jury.

(D) If the circumstances which supported the deviation cease to exist, the final child support order may be modified as set forth in subsection (k) of this Code section to eliminate the deviation.

(2) **Specific deviations.**

(A) **High income.** For purposes of this subparagraph, parents are considered to be high-income parents if their combined adjusted income exceeds \$30,000.00 per month. For high-income parents, the court shall set the basic child support obligation at the highest amount allowed by the child support obligation table but the court or the jury may consider upward deviation to attain an appropriate award of child support for high-income parents which is consistent with the best interest of the child.

(B) **Low income.**

(i) If the noncustodial parent can provide evidence sufficient to demonstrate no earning capacity or that his or her pro rata share of the presumptive amount of child support would create an extreme economic hardship for such parent, the court may consider a low-income deviation.

(ii) A noncustodial parent whose sole source of income is supplemental security income received under Title XVI of the

federal Social Security Act shall be considered to have no earning capacity.

(iii) The court or the jury shall examine all attributable and excluded sources of income, assets, and benefits available to the noncustodial parent and may consider all reasonable expenses of the noncustodial parent, ensuring that such expenses are actually paid by the noncustodial parent and are clearly justified expenses.

(iv) In considering a request for a low-income deviation, the court or the jury shall then weigh the income and all attributable and excluded sources of income, assets, and benefits and all reasonable expenses of each parent, the relative hardship that a reduction in the amount of child support paid to the custodial parent would have on the custodial parent's household, the needs of each parent, the needs of the child for whom child support is being determined, and the ability of the noncustodial parent to pay child support.

(v) Following a review of the noncustodial parent's gross income and expenses, and taking into account each parent's basic child support obligation adjusted by health insurance and work related child care costs and the relative hardships on the parents and the child, the court or the jury, upon request by either party or upon the court's initiative, may consider a downward deviation to attain an appropriate award of child support which is consistent with the best interest of the child.

(vi) For the purpose of calculating a low-income deviation, the noncustodial parent's minimum child support for one child shall be not less than \$100.00 per month, and such amount shall be increased by at least \$50.00 for each additional child for the same case for which child support is being ordered.

(vii) A low-income deviation granted pursuant to this subparagraph shall apply only to the current child support amount and shall not prohibit an additional amount being ordered to reduce a noncustodial parent's arrears.

(viii) If a low-income deviation is granted pursuant to this subparagraph, such deviation shall not prohibit the court or jury from granting an increase or decrease to the presumptive amount of child support by the use of any other specific or nonspecific deviation.

(C) Other health related insurance. If the court or the jury finds that either parent has vision or dental insurance available at a reasonable cost for the child, the court may deviate from the presumptive amount of child support for the cost of such insurance.

(D) **Life insurance.** In accordance with Code Section 19-6-34, if the court or the jury finds that either parent has purchased life insurance on the life of either parent or the lives of both parents for the benefit of the child, the court may deviate from the presumptive amount of child support for the cost of such insurance by either adding or subtracting the amount of the premium.

(E) **Child and dependent care tax credit.** If the court or the jury finds that one of the parents is entitled to the Child and Dependent Care Tax Credit, the court or the jury may deviate from the presumptive amount of child support in consideration of such credit.

(F) **Travel expenses.** If court ordered visitation related travel expenses are substantial due to the distance between the parents, the court may order the allocation of such costs or the jury may by a finding in its special interrogatory allocate such costs by deviation from the presumptive amount of child support, taking into consideration the circumstances of the respective parents as well as which parent moved and the reason for such move.

(G) **Alimony.** Actual payments of alimony shall not be considered as a deduction from gross income but may be considered as a deviation from the presumptive amount of child support. If the court or the jury considers the actual payment of alimony, the court shall make a written finding of such consideration or the jury, in its special interrogatory, shall make a written finding of such consideration as a basis for deviation from the presumptive amount of child support.

(H) **Mortgage.** If the noncustodial parent is providing shelter, such as paying the mortgage of the home, or has provided a home at no cost to the custodial parent in which the child resides, the court or the jury may allocate such costs or an amount equivalent to such costs by deviation from the presumptive amount of child support, taking into consideration the circumstances of the respective parents and the best interest of the child.

(I) **Permanency plan or foster care plan.** In cases where the child is in the legal custody of the Department of Human Services, the child protection or foster care agency of another state or territory, or any other child-caring entity, public or private, the court or the jury may consider a deviation from the presumptive amount of child support if the deviation will assist in accomplishing a permanency plan or foster care plan for the child that has a goal of returning the child to the parent or parents and the parent's need to establish an adequate household or to otherwise adequately prepare herself or himself for the return of the child clearly justifies a deviation for this purpose.

(J) **Extraordinary expenses.** The child support obligation table includes average child rearing expenditures for families given the parents' combined adjusted income and number of children. Extraordinary expenses are in excess of average amounts estimated in the child support obligation table and are highly variable among families. Extraordinary expenses shall be considered on a case-by-case basis in the calculation of support and may form the basis for deviation from the presumptive amount of child support so that the actual amount of the expense is considered in the calculation of the final child support order for only those families actually incurring the expense. Extraordinary expenses shall be prorated between the parents by assigning or deducting credit for actual payments for extraordinary expenses.

(i) **Extraordinary educational expenses.** Extraordinary educational expenses may be a basis for deviation from the presumptive amount of child support. Extraordinary educational expenses include, but are not limited to, tuition, room and board, lab fees, books, fees, and other reasonable and necessary expenses associated with special needs education or private elementary and secondary schooling that are appropriate to the parent's financial abilities and to the lifestyle of the child if the parents and the child were living together.

(I) In determining the amount of deviation for extraordinary educational expenses, scholarships, grants, stipends, and other cost-reducing programs received by or on behalf of the child shall be considered; and

(II) If a deviation is allowed for extraordinary educational expenses, a monthly average of the extraordinary educational expenses shall be based on evidence of prior or anticipated expenses and entered on the Child Support Schedule E — Deviations.

(ii) **Special expenses incurred for child rearing.** Special expenses incurred for child rearing, including, but not limited to, quantifiable expense variations related to the food, clothing, and hygiene costs of children at different age levels, may be a basis for a deviation from the presumptive amount of child support. Such expenses include, but are not limited to, summer camp; music or art lessons; travel; school sponsored extracurricular activities, such as band, clubs, and athletics; and other activities intended to enhance the athletic, social, or cultural development of a child but not otherwise required to be used in calculating the presumptive amount of child support as are health insurance premiums and work related child care costs. A portion of the basic child support obligation is intended to cover average

amounts of special expenses incurred in the rearing of a child. In order to determine if a deviation for special expenses is warranted, the court or the jury shall consider the full amount of the special expenses as described in this division; and when these special expenses exceed 7 percent of the basic child support obligation, then the additional amount of special expenses shall be considered as a deviation to cover the full amount of the special expenses.

(iii) **Extraordinary medical expenses.** In instances of extreme economic hardship involving extraordinary medical expenses not covered by insurance, the court or the jury may consider a deviation from the presumptive amount of child support for extraordinary medical expenses. Such expenses may include, but are not limited to, extraordinary medical expenses of the child or a parent of the child; provided, however, that any such deviation:

(I) Shall not act to leave a child unsupported; and

(II) May be ordered for a specific period of time measured in months.

When extraordinary medical expenses are claimed, the court or the jury shall consider the resources available for meeting such needs, including sources available from agencies and other adults.

(K) Parenting time.

(i) The child support obligation table is based upon expenditures for a child in intact households. The court may order or the jury may find by special interrogatory a deviation from the presumptive amount of child support when special circumstances make the presumptive amount of child support excessive or inadequate due to extended parenting time as set forth in the order of visitation or when the child resides with both parents equally.

(ii) If the court or the jury determines that a parenting time deviation is applicable, then such deviation shall be included with all other deviations and be treated as a deduction.

(iii) In accordance with subsection (d) of Code Section 19-11-8, if any action or claim for parenting time or a parenting time deviation is brought under this subparagraph, it shall be an action or claim solely between the custodial parent and the noncustodial parent, and not any third parties, including child support services.

(3) **Nonspecific deviations.** Deviations from the presumptive amount of child support may be appropriate for reasons in addition to those established under this subsection when the court or the jury finds it is in the best interest of the child.

(j) **Involuntary loss of income.**

(1) In the event a parent suffers an involuntary termination of employment, has an extended involuntary loss of average weekly hours, is involved in an organized strike, incurs a loss of health, or similar involuntary adversity resulting in a loss of income of 25 percent or more, then the portion of child support attributable to lost income shall not accrue from the date of the service of the petition for modification, provided that service is made on the other parent. It shall not be considered an involuntary termination of employment if the parent has left the employer without good cause in connection with the parent's most recent work.

(2) In the event a modification action is filed pursuant to this subsection, the court shall make every effort to expedite hearing such action.

(3) The court may, at its discretion, phase in the new child support award over a period of up to one year with the phasing in being largely evenly distributed with at least an initial immediate adjustment of not less than 25 percent of the difference and at least one intermediate adjustment prior to the final adjustment at the end of the phase-in period.

(k) **Modification.**

(1) Except as provided in paragraph (2) of this subsection, a parent shall not have the right to petition for modification of the child support award regardless of the length of time since the establishment of the child support award unless there is a substantial change in either parent's income and financial status or the needs of the child.

(2) No petition to modify child support may be filed by either parent within a period of two years from the date of the final order on a previous petition to modify by the same parent except where:

(A) A noncustodial parent has failed to exercise the court ordered visitation;

(B) A noncustodial parent has exercised a greater amount of visitation than was provided in the court order; or

(C) The motion to modify is based upon an involuntary loss of income as set forth in subsection (j) of this Code section.

(3)(A) If there is a difference of at least 15 percent but less than 30 percent between a new award and a Georgia child support order entered prior to January 1, 2007, the court may, at its discretion, phase in the new child support award over a period of up to one year with the phasing in being largely evenly distributed with at least an initial immediate adjustment of not less than 25 percent of the difference and at least one intermediate adjustment prior to the final adjustment at the end of the phase-in period.

(B) If there is a difference of 30 percent or more between a new award and a Georgia child support order entered prior to January 1, 2007, the court may, at its discretion, phase in the new child support award over a period of up to two years with the phasing in being largely evenly distributed with at least an initial immediate adjustment of not less than 25 percent of the difference and at least one intermediate adjustment prior to the final adjustment at the end of the phase-in period.

(C) All child support service's case reviews and modifications shall proceed and be governed by Code Section 19-11-12. Subsequent changes to the child support obligation table shall be a reason to request a review for modification from child support services to the extent that such changes are consistent with the requirements of Code Section 19-11-12.

(4) A petition for modification shall be filed under the same rules of procedure applicable to divorce proceedings. The court may allow, upon motion, the temporary modification of a child support order pending the final trial on the petition. An order granting temporary modification shall be subject to revision by the court at any time before the final trial. A jury may be demanded on a petition for modification but the jury shall only be responsible for determining a parent's gross income and any deviations. In the hearing upon a petition for modification, testimony may be given and evidence introduced relative to the change of circumstances, income and financial status of either parent, or in the needs of the child. After hearing both parties and the evidence, the court may modify and revise the previous judgment, in accordance with the changed circumstances, income and financial status of either parent, or in the needs of the child, if such change or changes are satisfactorily proven so as to warrant the modification and revision and such modification and revisions are in the child's best interest. The court shall enter a written order specifying the basis for the modification, if any, and shall include all of the information set forth in paragraph (2) of subsection (c) of this Code section.

(5) In proceedings for the modification of a child support award pursuant to the provisions of this Code section, the court may award

attorney's fees, costs, and expenses of litigation to the prevailing party as the interests of justice may require. Where a custodial parent prevails in an upward modification of child support based upon the noncustodial parent's failure to be available and willing to exercise court ordered visitation, reasonable and necessary attorney's fees and expenses of litigation shall be awarded to the custodial parent.

(l) **Split parenting.** In cases of split parenting, a worksheet shall be prepared separately for the child for whom the father is the custodial parent and for the child for whom the mother is the custodial parent, and that worksheet shall be filed with the clerk of court. For each split parenting custodial situation, the court shall determine:

- (1) Which parent is the obligor;
- (2) The presumptive amount of child support;
- (3) The actual award of child support, if different from the presumptive amount of child support;
- (4) How and when the sum certain amount of child support owed shall be paid; and
- (5) Any other child support responsibilities for each parent.

(m) **Worksheets.**

(1) Schedules and worksheets shall be prepared by the parties for purposes of calculating the amount of child support. In child support services cases in which neither parent prepared a worksheet, the court may rely on the worksheet prepared by child support services as a basis for its order. Information from the schedules shall be entered on the child support worksheet. The child support worksheet and, if there are any deviations, Schedule E shall be attached to the final court order or judgment; provided, however, that any order entered pursuant to Code Section 19-13-4 shall not be required to have such worksheet and schedule attached thereto.

(2) The child support worksheet and schedules shall be promulgated by the Georgia Child Support Commission.

(n) **Child support obligation table.** The child support obligation table shall be proposed by the Georgia Child Support Commission and shall be as codified in subsection (o) of this Code section.

(o) **Georgia Schedule of Basic Child Support Obligations.**

Georgia Schedule of Basic Child Support Obligations						
Combined Adjusted Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
\$ 800.00	\$ 197.00	\$ 283.00	\$ 330.00	\$ 367.00	\$ 404.00	\$ 440.00
850.00	208.00	298.00	347.00	387.00	425.00	463.00
900.00	218.00	313.00	364.00	406.00	447.00	486.00
950.00	229.00	328.00	381.00	425.00	468.00	509.00
1,000.00	239.00	343.00	398.00	444.00	489.00	532.00
1,050.00	250.00	357.00	415.00	463.00	510.00	554.00
1,100.00	260.00	372.00	432.00	482.00	530.00	577.00
1,150.00	270.00	387.00	449.00	501.00	551.00	600.00
1,200.00	280.00	401.00	466.00	520.00	572.00	622.00
1,250.00	291.00	416.00	483.00	539.00	593.00	645.00
1,300.00	301.00	431.00	500.00	558.00	614.00	668.00
1,350.00	311.00	445.00	517.00	577.00	634.00	690.00
1,400.00	321.00	459.00	533.00	594.00	654.00	711.00
1,450.00	331.00	473.00	549.00	612.00	673.00	733.00
1,500.00	340.00	487.00	565.00	630.00	693.00	754.00
1,550.00	350.00	500.00	581.00	647.00	712.00	775.00
1,600.00	360.00	514.00	597.00	665.00	732.00	796.00
1,650.00	369.00	528.00	612.00	683.00	751.00	817.00
1,700.00	379.00	542.00	628.00	701.00	771.00	838.00
1,750.00	389.00	555.00	644.00	718.00	790.00	860.00
1,800.00	398.00	569.00	660.00	736.00	809.00	881.00
1,850.00	408.00	583.00	676.00	754.00	829.00	902.00
1,900.00	418.00	596.00	692.00	771.00	848.00	923.00
1,950.00	427.00	610.00	708.00	789.00	868.00	944.00
2,000.00	437.00	624.00	723.00	807.00	887.00	965.00
2,050.00	446.00	637.00	739.00	824.00	906.00	986.00
2,100.00	455.00	650.00	754.00	840.00	924.00	1,006.00
2,150.00	465.00	663.00	769.00	857.00	943.00	1,026.00
2,200.00	474.00	676.00	783.00	873.00	961.00	1,045.00
2,250.00	483.00	688.00	798.00	890.00	979.00	1,065.00
2,300.00	492.00	701.00	813.00	907.00	997.00	1,085.00
2,350.00	501.00	714.00	828.00	923.00	1,016.00	1,105.00
2,400.00	510.00	727.00	843.00	940.00	1,034.00	1,125.00
2,450.00	519.00	740.00	858.00	956.00	1,052.00	1,145.00
2,500.00	528.00	752.00	873.00	973.00	1,070.00	1,165.00

Georgia Schedule of Basic Child Support Obligations						
Combined Adjusted Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
2,550.00	537.00	765.00	888.00	990.00	1,089.00	1,184.00
2,600.00	547.00	778.00	902.00	1,006.00	1,107.00	1,204.00
2,650.00	556.00	791.00	917.00	1,023.00	1,125.00	1,224.00
2,700.00	565.00	804.00	932.00	1,039.00	1,143.00	1,244.00
2,750.00	574.00	816.00	947.00	1,056.00	1,162.00	1,264.00
2,800.00	583.00	829.00	962.00	1,073.00	1,180.00	1,284.00
2,850.00	592.00	842.00	977.00	1,089.00	1,198.00	1,303.00
2,900.00	601.00	855.00	992.00	1,106.00	1,216.00	1,323.00
2,950.00	611.00	868.00	1,006.00	1,122.00	1,234.00	1,343.00
3,000.00	620.00	881.00	1,021.00	1,139.00	1,253.00	1,363.00
3,050.00	629.00	893.00	1,036.00	1,155.00	1,271.00	1,383.00
3,100.00	638.00	906.00	1,051.00	1,172.00	1,289.00	1,402.00
3,150.00	647.00	919.00	1,066.00	1,188.00	1,307.00	1,422.00
3,200.00	655.00	930.00	1,079.00	1,203.00	1,323.00	1,440.00
3,250.00	663.00	941.00	1,092.00	1,217.00	1,339.00	1,457.00
3,300.00	671.00	952.00	1,104.00	1,231.00	1,355.00	1,474.00
3,350.00	679.00	963.00	1,117.00	1,246.00	1,370.00	1,491.00
3,400.00	687.00	974.00	1,130.00	1,260.00	1,386.00	1,508.00
3,450.00	694.00	985.00	1,143.00	1,274.00	1,402.00	1,525.00
3,500.00	702.00	996.00	1,155.00	1,288.00	1,417.00	1,542.00
3,550.00	710.00	1,008.00	1,168.00	1,303.00	1,433.00	1,559.00
3,600.00	718.00	1,019.00	1,181.00	1,317.00	1,448.00	1,576.00
3,650.00	726.00	1,030.00	1,194.00	1,331.00	1,464.00	1,593.00
3,700.00	734.00	1,041.00	1,207.00	1,345.00	1,480.00	1,610.00
3,750.00	741.00	1,051.00	1,219.00	1,359.00	1,495.00	1,627.00
3,800.00	749.00	1,062.00	1,231.00	1,373.00	1,510.00	1,643.00
3,850.00	756.00	1,072.00	1,243.00	1,386.00	1,525.00	1,659.00
3,900.00	764.00	1,083.00	1,255.00	1,400.00	1,540.00	1,675.00
3,950.00	771.00	1,093.00	1,267.00	1,413.00	1,555.00	1,691.00
4,000.00	779.00	1,104.00	1,280.00	1,427.00	1,569.00	1,707.00
4,050.00	786.00	1,114.00	1,292.00	1,440.00	1,584.00	1,724.00
4,100.00	794.00	1,125.00	1,304.00	1,454.00	1,599.00	1,740.00
4,150.00	801.00	1,135.00	1,316.00	1,467.00	1,614.00	1,756.00
4,200.00	809.00	1,146.00	1,328.00	1,481.00	1,629.00	1,772.00
4,250.00	816.00	1,156.00	1,340.00	1,494.00	1,643.00	1,788.00

Georgia Schedule of Basic Child Support Obligations						
Combined Adjusted Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
4,300.00	824.00	1,167.00	1,352.00	1,508.00	1,658.00	1,804.00
4,350.00	831.00	1,177.00	1,364.00	1,521.00	1,673.00	1,820.00
4,400.00	839.00	1,188.00	1,376.00	1,534.00	1,688.00	1,836.00
4,450.00	846.00	1,198.00	1,388.00	1,548.00	1,703.00	1,853.00
4,500.00	853.00	1,209.00	1,400.00	1,561.00	1,718.00	1,869.00
4,550.00	861.00	1,219.00	1,412.00	1,575.00	1,732.00	1,885.00
4,600.00	868.00	1,230.00	1,425.00	1,588.00	1,747.00	1,901.00
4,650.00	876.00	1,240.00	1,437.00	1,602.00	1,762.00	1,917.00
4,700.00	883.00	1,251.00	1,449.00	1,615.00	1,777.00	1,933.00
4,750.00	891.00	1,261.00	1,461.00	1,629.00	1,792.00	1,949.00
4,800.00	898.00	1,271.00	1,473.00	1,642.00	1,807.00	1,966.00
4,850.00	906.00	1,282.00	1,485.00	1,656.00	1,821.00	1,982.00
4,900.00	911.00	1,289.00	1,493.00	1,664.00	1,831.00	1,992.00
4,950.00	914.00	1,293.00	1,496.00	1,668.00	1,835.00	1,997.00
5,000.00	917.00	1,297.00	1,500.00	1,672.00	1,839.00	2,001.00
5,050.00	921.00	1,300.00	1,503.00	1,676.00	1,844.00	2,006.00
5,100.00	924.00	1,304.00	1,507.00	1,680.00	1,848.00	2,011.00
5,150.00	927.00	1,308.00	1,510.00	1,684.00	1,852.00	2,015.00
5,200.00	930.00	1,312.00	1,514.00	1,688.00	1,857.00	2,020.00
5,250.00	934.00	1,316.00	1,517.00	1,692.00	1,861.00	2,025.00
5,300.00	937.00	1,320.00	1,521.00	1,696.00	1,865.00	2,029.00
5,350.00	940.00	1,323.00	1,524.00	1,700.00	1,870.00	2,034.00
5,400.00	943.00	1,327.00	1,528.00	1,704.00	1,874.00	2,039.00
5,450.00	947.00	1,331.00	1,531.00	1,708.00	1,878.00	2,044.00
5,500.00	950.00	1,335.00	1,535.00	1,711.00	1,883.00	2,048.00
5,550.00	953.00	1,339.00	1,538.00	1,715.00	1,887.00	2,053.00
5,600.00	956.00	1,342.00	1,542.00	1,719.00	1,891.00	2,058.00
5,650.00	960.00	1,347.00	1,546.00	1,724.00	1,896.00	2,063.00
5,700.00	964.00	1,352.00	1,552.00	1,731.00	1,904.00	2,071.00
5,750.00	968.00	1,357.00	1,558.00	1,737.00	1,911.00	2,079.00
5,800.00	971.00	1,363.00	1,564.00	1,744.00	1,918.00	2,087.00
5,850.00	975.00	1,368.00	1,570.00	1,750.00	1,925.00	2,094.00
5,900.00	979.00	1,373.00	1,575.00	1,757.00	1,932.00	2,102.00
5,950.00	983.00	1,379.00	1,581.00	1,763.00	1,939.00	2,110.00
6,000.00	987.00	1,384.00	1,587.00	1,770.00	1,947.00	2,118.00

Georgia Schedule of Basic Child Support Obligations						
Combined Adjusted Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
6,050.00	991.00	1,389.00	1,593.00	1,776.00	1,954.00	2,126.00
6,100.00	995.00	1,394.00	1,599.00	1,783.00	1,961.00	2,133.00
6,150.00	999.00	1,400.00	1,605.00	1,789.00	1,968.00	2,141.00
6,200.00	1,003.00	1,405.00	1,610.00	1,796.00	1,975.00	2,149.00
6,250.00	1,007.00	1,410.00	1,616.00	1,802.00	1,982.00	2,157.00
6,300.00	1,011.00	1,416.00	1,622.00	1,809.00	1,989.00	2,164.00
6,350.00	1,015.00	1,421.00	1,628.00	1,815.00	1,996.00	2,172.00
6,400.00	1,018.00	1,426.00	1,633.00	1,821.00	2,003.00	2,180.00
6,450.00	1,023.00	1,432.00	1,639.00	1,828.00	2,011.00	2,188.00
6,500.00	1,027.00	1,437.00	1,646.00	1,835.00	2,018.00	2,196.00
6,550.00	1,031.00	1,442.00	1,652.00	1,841.00	2,026.00	2,204.00
6,600.00	1,035.00	1,448.00	1,658.00	1,848.00	2,033.00	2,212.00
6,650.00	1,039.00	1,453.00	1,664.00	1,855.00	2,040.00	2,220.00
6,700.00	1,043.00	1,459.00	1,670.00	1,862.00	2,048.00	2,228.00
6,750.00	1,047.00	1,464.00	1,676.00	1,869.00	2,055.00	2,236.00
6,800.00	1,051.00	1,470.00	1,682.00	1,875.00	2,063.00	2,244.00
6,850.00	1,055.00	1,475.00	1,688.00	1,882.00	2,070.00	2,252.00
6,900.00	1,059.00	1,480.00	1,694.00	1,889.00	2,078.00	2,260.00
6,950.00	1,063.00	1,486.00	1,700.00	1,896.00	2,085.00	2,269.00
7,000.00	1,067.00	1,491.00	1,706.00	1,902.00	2,092.00	2,277.00
7,050.00	1,071.00	1,497.00	1,712.00	1,909.00	2,100.00	2,285.00
7,100.00	1,075.00	1,502.00	1,718.00	1,916.00	2,107.00	2,293.00
7,150.00	1,079.00	1,508.00	1,724.00	1,923.00	2,115.00	2,301.00
7,200.00	1,083.00	1,513.00	1,730.00	1,929.00	2,122.00	2,309.00
7,250.00	1,087.00	1,518.00	1,736.00	1,936.00	2,130.00	2,317.00
7,300.00	1,092.00	1,524.00	1,742.00	1,943.00	2,137.00	2,325.00
7,350.00	1,096.00	1,529.00	1,748.00	1,950.00	2,144.00	2,333.00
7,400.00	1,100.00	1,535.00	1,755.00	1,956.00	2,152.00	2,341.00
7,450.00	1,104.00	1,540.00	1,761.00	1,963.00	2,159.00	2,349.00
7,500.00	1,108.00	1,546.00	1,767.00	1,970.00	2,167.00	2,357.00
7,550.00	1,112.00	1,552.00	1,773.00	1,977.00	2,175.00	2,366.00
7,600.00	1,116.00	1,556.00	1,778.00	1,983.00	2,181.00	2,373.00
7,650.00	1,117.00	1,557.00	1,779.00	1,984.00	2,182.00	2,375.00
7,700.00	1,118.00	1,559.00	1,781.00	1,986.00	2,184.00	2,376.00
7,750.00	1,119.00	1,560.00	1,782.00	1,987.00	2,186.00	2,378.00

Georgia Schedule of Basic Child Support Obligations						
Combined Adjusted Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
7,800.00	1,120.00	1,562.00	1,784.00	1,989.00	2,188.00	2,380.00
7,850.00	1,122.00	1,563.00	1,785.00	1,990.00	2,189.00	2,382.00
7,900.00	1,123.00	1,565.00	1,786.00	1,992.00	2,191.00	2,384.00
7,950.00	1,124.00	1,566.00	1,788.00	1,993.00	2,193.00	2,386.00
8,000.00	1,125.00	1,567.00	1,789.00	1,995.00	2,194.00	2,387.00
8,050.00	1,127.00	1,569.00	1,790.00	1,996.00	2,196.00	2,389.00
8,100.00	1,128.00	1,570.00	1,792.00	1,998.00	2,198.00	2,391.00
8,150.00	1,129.00	1,572.00	1,793.00	1,999.00	2,199.00	2,393.00
8,200.00	1,130.00	1,573.00	1,795.00	2,001.00	2,201.00	2,395.00
8,250.00	1,131.00	1,575.00	1,796.00	2,003.00	2,203.00	2,397.00
8,300.00	1,133.00	1,576.00	1,797.00	2,004.00	2,204.00	2,398.00
8,350.00	1,134.00	1,578.00	1,799.00	2,006.00	2,206.00	2,400.00
8,400.00	1,135.00	1,579.00	1,800.00	2,007.00	2,208.00	2,402.00
8,450.00	1,136.00	1,580.00	1,802.00	2,009.00	2,210.00	2,404.00
8,500.00	1,138.00	1,582.00	1,803.00	2,010.00	2,211.00	2,406.00
8,550.00	1,139.00	1,583.00	1,804.00	2,012.00	2,213.00	2,408.00
8,600.00	1,140.00	1,585.00	1,806.00	2,013.00	2,215.00	2,410.00
8,650.00	1,141.00	1,586.00	1,807.00	2,015.00	2,216.00	2,411.00
8,700.00	1,142.00	1,588.00	1,808.00	2,016.00	2,218.00	2,413.00
8,750.00	1,144.00	1,589.00	1,810.00	2,018.00	2,220.00	2,415.00
8,800.00	1,145.00	1,591.00	1,811.00	2,019.00	2,221.00	2,417.00
8,850.00	1,146.00	1,592.00	1,813.00	2,021.00	2,223.00	2,419.00
8,900.00	1,147.00	1,593.00	1,814.00	2,023.00	2,225.00	2,421.00
8,950.00	1,149.00	1,595.00	1,815.00	2,024.00	2,226.00	2,422.00
9,000.00	1,150.00	1,596.00	1,817.00	2,026.00	2,228.00	2,424.00
9,050.00	1,153.00	1,601.00	1,822.00	2,032.00	2,235.00	2,431.00
9,100.00	1,159.00	1,609.00	1,831.00	2,042.00	2,246.00	2,443.00
9,150.00	1,164.00	1,617.00	1,840.00	2,052.00	2,257.00	2,455.00
9,200.00	1,170.00	1,624.00	1,849.00	2,062.00	2,268.00	2,467.00
9,250.00	1,175.00	1,632.00	1,858.00	2,071.00	2,279.00	2,479.00
9,300.00	1,181.00	1,640.00	1,867.00	2,081.00	2,290.00	2,491.00
9,350.00	1,187.00	1,648.00	1,876.00	2,091.00	2,301.00	2,503.00
9,400.00	1,192.00	1,656.00	1,885.00	2,101.00	2,311.00	2,515.00
9,450.00	1,198.00	1,663.00	1,894.00	2,111.00	2,322.00	2,527.00
9,500.00	1,203.00	1,671.00	1,902.00	2,121.00	2,333.00	2,539.00

Georgia Schedule of Basic Child Support Obligations						
Combined Adjusted Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
9,550.00	1,209.00	1,679.00	1,911.00	2,131.00	2,344.00	2,551.00
9,600.00	1,214.00	1,687.00	1,920.00	2,141.00	2,355.00	2,563.00
9,650.00	1,220.00	1,694.00	1,929.00	2,151.00	2,366.00	2,574.00
9,700.00	1,226.00	1,702.00	1,938.00	2,161.00	2,377.00	2,586.00
9,750.00	1,231.00	1,710.00	1,947.00	2,171.00	2,388.00	2,598.00
9,800.00	1,237.00	1,718.00	1,956.00	2,181.00	2,399.00	2,610.00
9,850.00	1,242.00	1,725.00	1,965.00	2,191.00	2,410.00	2,622.00
9,900.00	1,248.00	1,733.00	1,974.00	2,201.00	2,421.00	2,634.00
9,950.00	1,253.00	1,741.00	1,983.00	2,211.00	2,432.00	2,646.00
10,000.00	1,259.00	1,749.00	1,992.00	2,221.00	2,443.00	2,658.00
10,050.00	1,264.00	1,757.00	2,001.00	2,231.00	2,454.00	2,670.00
10,100.00	1,270.00	1,764.00	2,010.00	2,241.00	2,465.00	2,682.00
10,150.00	1,276.00	1,772.00	2,019.00	2,251.00	2,476.00	2,694.00
10,200.00	1,281.00	1,780.00	2,028.00	2,261.00	2,487.00	2,706.00
10,250.00	1,287.00	1,788.00	2,036.00	2,271.00	2,498.00	2,718.00
10,300.00	1,292.00	1,795.00	2,045.00	2,281.00	2,509.00	2,729.00
10,350.00	1,298.00	1,803.00	2,054.00	2,291.00	2,520.00	2,741.00
10,400.00	1,303.00	1,811.00	2,063.00	2,301.00	2,531.00	2,753.00
10,450.00	1,309.00	1,819.00	2,072.00	2,311.00	2,542.00	2,765.00
10,500.00	1,313.00	1,825.00	2,079.00	2,318.00	2,550.00	2,774.00
10,550.00	1,317.00	1,830.00	2,085.00	2,325.00	2,557.00	2,782.00
10,600.00	1,321.00	1,835.00	2,091.00	2,331.00	2,564.00	2,790.00
10,650.00	1,325.00	1,841.00	2,096.00	2,338.00	2,571.00	2,798.00
10,700.00	1,329.00	1,846.00	2,102.00	2,344.00	2,578.00	2,805.00
10,750.00	1,332.00	1,851.00	2,108.00	2,351.00	2,586.00	2,813.00
10,800.00	1,336.00	1,856.00	2,114.00	2,357.00	2,593.00	2,821.00
10,850.00	1,340.00	1,862.00	2,120.00	2,364.00	2,600.00	2,829.00
10,900.00	1,344.00	1,867.00	2,126.00	2,370.00	2,607.00	2,836.00
10,950.00	1,348.00	1,872.00	2,131.00	2,377.00	2,614.00	2,844.00
11,000.00	1,351.00	1,877.00	2,137.00	2,383.00	2,621.00	2,852.00
11,050.00	1,355.00	1,883.00	2,143.00	2,390.00	2,628.00	2,860.00
11,100.00	1,359.00	1,888.00	2,149.00	2,396.00	2,636.00	2,868.00
11,150.00	1,363.00	1,893.00	2,155.00	2,403.00	2,643.00	2,875.00
11,200.00	1,367.00	1,898.00	2,161.00	2,409.00	2,650.00	2,883.00
11,250.00	1,371.00	1,904.00	2,166.00	2,415.00	2,657.00	2,891.00

Georgia Schedule of Basic Child Support Obligations						
Combined Adjusted Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
11,300.00	1,374.00	1,909.00	2,172.00	2,422.00	2,664.00	2,899.00
11,350.00	1,378.00	1,914.00	2,178.00	2,428.00	2,671.00	2,906.00
11,400.00	1,382.00	1,919.00	2,184.00	2,435.00	2,678.00	2,914.00
11,450.00	1,386.00	1,925.00	2,190.00	2,441.00	2,686.00	2,922.00
11,500.00	1,390.00	1,930.00	2,195.00	2,448.00	2,693.00	2,930.00
11,550.00	1,394.00	1,935.00	2,201.00	2,454.00	2,700.00	2,938.00
11,600.00	1,397.00	1,940.00	2,207.00	2,461.00	2,707.00	2,945.00
11,650.00	1,401.00	1,946.00	2,213.00	2,467.00	2,714.00	2,953.00
11,700.00	1,405.00	1,951.00	2,219.00	2,474.00	2,721.00	2,961.00
11,750.00	1,409.00	1,956.00	2,225.00	2,480.00	2,728.00	2,969.00
11,800.00	1,413.00	1,961.00	2,230.00	2,487.00	2,736.00	2,976.00
11,850.00	1,417.00	1,967.00	2,236.00	2,493.00	2,743.00	2,984.00
11,900.00	1,420.00	1,972.00	2,242.00	2,500.00	2,750.00	2,992.00
11,950.00	1,424.00	1,977.00	2,248.00	2,506.00	2,757.00	3,000.00
12,000.00	1,428.00	1,982.00	2,254.00	2,513.00	2,764.00	3,007.00
12,050.00	1,432.00	1,988.00	2,260.00	2,519.00	2,771.00	3,015.00
12,100.00	1,436.00	1,993.00	2,265.00	2,526.00	2,779.00	3,023.00
12,150.00	1,439.00	1,998.00	2,271.00	2,532.00	2,786.00	3,031.00
12,200.00	1,443.00	2,003.00	2,277.00	2,539.00	2,793.00	3,039.00
12,250.00	1,447.00	2,009.00	2,283.00	2,545.00	2,800.00	3,046.00
12,300.00	1,451.00	2,014.00	2,289.00	2,552.00	2,807.00	3,054.00
12,350.00	1,455.00	2,019.00	2,295.00	2,558.00	2,814.00	3,062.00
12,400.00	1,459.00	2,024.00	2,300.00	2,565.00	2,821.00	3,070.00
12,450.00	1,462.00	2,030.00	2,306.00	2,571.00	2,829.00	3,077.00
12,500.00	1,466.00	2,035.00	2,312.00	2,578.00	2,836.00	3,085.00
12,550.00	1,470.00	2,040.00	2,318.00	2,584.00	2,843.00	3,093.00
12,600.00	1,474.00	2,045.00	2,324.00	2,591.00	2,850.00	3,101.00
12,650.00	1,477.00	2,050.00	2,329.00	2,597.00	2,857.00	3,108.00
12,700.00	1,481.00	2,055.00	2,335.00	2,603.00	2,863.00	3,115.00
12,750.00	1,484.00	2,060.00	2,340.00	2,609.00	2,870.00	3,123.00
12,800.00	1,487.00	2,064.00	2,345.00	2,615.00	2,877.00	3,130.00
12,850.00	1,491.00	2,069.00	2,351.00	2,621.00	2,883.00	3,137.00
12,900.00	1,494.00	2,074.00	2,356.00	2,627.00	2,890.00	3,144.00
12,950.00	1,497.00	2,078.00	2,361.00	2,633.00	2,896.00	3,151.00
13,000.00	1,501.00	2,083.00	2,367.00	2,639.00	2,903.00	3,158.00

Georgia Schedule of Basic Child Support Obligations						
Combined Adjusted Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
13,050.00	1,504.00	2,087.00	2,372.00	2,645.00	2,909.00	3,165.00
13,100.00	1,507.00	2,092.00	2,377.00	2,651.00	2,916.00	3,172.00
13,150.00	1,510.00	2,097.00	2,383.00	2,657.00	2,922.00	3,180.00
13,200.00	1,514.00	2,101.00	2,388.00	2,663.00	2,929.00	3,187.00
13,250.00	1,517.00	2,106.00	2,393.00	2,668.00	2,935.00	3,193.00
13,300.00	1,520.00	2,110.00	2,398.00	2,674.00	2,941.00	3,200.00
13,350.00	1,523.00	2,114.00	2,403.00	2,679.00	2,947.00	3,206.00
13,400.00	1,526.00	2,118.00	2,408.00	2,685.00	2,953.00	3,213.00
13,450.00	1,529.00	2,123.00	2,413.00	2,690.00	2,959.00	3,220.00
13,500.00	1,532.00	2,127.00	2,418.00	2,696.00	2,965.00	3,226.00
13,550.00	1,535.00	2,131.00	2,423.00	2,701.00	2,971.00	3,233.00
13,600.00	1,538.00	2,136.00	2,428.00	2,707.00	2,977.00	3,239.00
13,650.00	1,541.00	2,140.00	2,432.00	2,712.00	2,983.00	3,246.00
13,700.00	1,544.00	2,144.00	2,437.00	2,718.00	2,989.00	3,253.00
13,750.00	1,547.00	2,148.00	2,442.00	2,723.00	2,996.00	3,259.00
13,800.00	1,550.00	2,153.00	2,447.00	2,729.00	3,002.00	3,266.00
13,850.00	1,553.00	2,157.00	2,452.00	2,734.00	3,008.00	3,272.00
13,900.00	1,556.00	2,161.00	2,457.00	2,740.00	3,014.00	3,279.00
13,950.00	1,559.00	2,166.00	2,462.00	2,745.00	3,020.00	3,285.00
14,000.00	1,562.00	2,170.00	2,467.00	2,751.00	3,026.00	3,292.00
14,050.00	1,565.00	2,174.00	2,472.00	2,756.00	3,032.00	3,299.00
14,100.00	1,568.00	2,178.00	2,477.00	2,762.00	3,038.00	3,305.00
14,150.00	1,571.00	2,183.00	2,482.00	2,767.00	3,044.00	3,312.00
14,200.00	1,574.00	2,187.00	2,487.00	2,773.00	3,050.00	3,318.00
14,250.00	1,577.00	2,191.00	2,492.00	2,778.00	3,056.00	3,325.00
14,300.00	1,581.00	2,195.00	2,497.00	2,784.00	3,062.00	3,332.00
14,350.00	1,584.00	2,200.00	2,502.00	2,789.00	3,068.00	3,338.00
14,400.00	1,587.00	2,204.00	2,506.00	2,795.00	3,074.00	3,345.00
14,450.00	1,590.00	2,208.00	2,511.00	2,800.00	3,080.00	3,351.00
14,500.00	1,593.00	2,213.00	2,516.00	2,806.00	3,086.00	3,358.00
14,550.00	1,596.00	2,217.00	2,521.00	2,811.00	3,092.00	3,365.00
14,600.00	1,599.00	2,221.00	2,526.00	2,817.00	3,098.00	3,371.00
14,650.00	1,602.00	2,225.00	2,531.00	2,822.00	3,104.00	3,378.00
14,700.00	1,605.00	2,230.00	2,536.00	2,828.00	3,111.00	3,384.00
14,750.00	1,608.00	2,234.00	2,541.00	2,833.00	3,117.00	3,391.00

Georgia Schedule of Basic Child Support Obligations						
Combined Adjusted Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
14,800.00	1,611.00	2,238.00	2,546.00	2,839.00	3,123.00	3,397.00
14,850.00	1,614.00	2,243.00	2,551.00	2,844.00	3,129.00	3,404.00
14,900.00	1,617.00	2,247.00	2,556.00	2,850.00	3,135.00	3,411.00
14,950.00	1,620.00	2,251.00	2,561.00	2,855.00	3,141.00	3,417.00
15,000.00	1,623.00	2,255.00	2,566.00	2,861.00	3,147.00	3,424.00
15,050.00	1,626.00	2,260.00	2,571.00	2,866.00	3,153.00	3,430.00
15,100.00	1,629.00	2,264.00	2,576.00	2,872.00	3,159.00	3,437.00
15,150.00	1,632.00	2,268.00	2,581.00	2,877.00	3,165.00	3,444.00
15,200.00	1,635.00	2,272.00	2,585.00	2,883.00	3,171.00	3,450.00
15,250.00	1,638.00	2,277.00	2,590.00	2,888.00	3,177.00	3,457.00
15,300.00	1,641.00	2,281.00	2,595.00	2,894.00	3,183.00	3,463.00
15,350.00	1,644.00	2,285.00	2,600.00	2,899.00	3,189.00	3,470.00
15,400.00	1,647.00	2,290.00	2,605.00	2,905.00	3,195.00	3,476.00
15,450.00	1,650.00	2,294.00	2,610.00	2,910.00	3,201.00	3,483.00
15,500.00	1,653.00	2,298.00	2,615.00	2,916.00	3,207.00	3,490.00
15,550.00	1,656.00	2,302.00	2,620.00	2,921.00	3,213.00	3,496.00
15,600.00	1,659.00	2,307.00	2,625.00	2,927.00	3,219.00	3,503.00
15,650.00	1,663.00	2,311.00	2,630.00	2,932.00	3,226.00	3,509.00
15,700.00	1,666.00	2,315.00	2,635.00	2,938.00	3,232.00	3,516.00
15,750.00	1,669.00	2,320.00	2,640.00	2,943.00	3,238.00	3,523.00
15,800.00	1,672.00	2,324.00	2,645.00	2,949.00	3,244.00	3,529.00
15,850.00	1,675.00	2,328.00	2,650.00	2,954.00	3,250.00	3,536.00
15,900.00	1,678.00	2,332.00	2,655.00	2,960.00	3,256.00	3,542.00
15,950.00	1,681.00	2,337.00	2,659.00	2,965.00	3,262.00	3,549.00
16,000.00	1,684.00	2,341.00	2,664.00	2,971.00	3,268.00	3,555.00
16,050.00	1,687.00	2,345.00	2,669.00	2,976.00	3,274.00	3,562.00
16,100.00	1,690.00	2,349.00	2,674.00	2,982.00	3,280.00	3,569.00
16,150.00	1,692.00	2,353.00	2,678.00	2,986.00	3,285.00	3,574.00
16,200.00	1,695.00	2,356.00	2,682.00	2,990.00	3,289.00	3,579.00
16,250.00	1,698.00	2,360.00	2,686.00	2,999.00	3,294.00	3,584.00
16,300.00	1,700.00	2,363.00	2,689.00	2,999.00	3,299.00	3,589.00
16,350.00	1,703.00	2,367.00	2,693.00	3,003.00	3,303.00	3,594.00
16,400.00	1,706.00	2,370.00	2,697.00	3,007.00	3,308.00	3,599.00
16,450.00	1,708.00	2,374.00	2,701.00	3,011.00	3,313.00	3,604.00
16,500.00	1,711.00	2,377.00	2,705.00	3,016.00	3,317.00	3,609.00

Georgia Schedule of Basic Child Support Obligations						
Combined Adjusted Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
16,550.00	1,714.00	2,381.00	2,708.00	3,020.00	3,322.00	3,614.00
16,600.00	1,716.00	2,384.00	2,712.00	3,024.00	3,327.00	3,619.00
16,650.00	1,719.00	2,388.00	2,716.00	3,028.00	3,331.00	3,624.00
16,700.00	1,722.00	2,391.00	2,720.00	3,033.00	3,336.00	3,630.00
16,750.00	1,724.00	2,395.00	2,724.00	3,037.00	3,341.00	3,635.00
16,800.00	1,727.00	2,398.00	2,728.00	3,041.00	3,345.00	3,640.00
16,850.00	1,730.00	2,402.00	2,731.00	3,045.00	3,350.00	3,645.00
16,900.00	1,732.00	2,405.00	2,735.00	3,050.00	3,355.00	3,650.00
16,950.00	1,735.00	2,409.00	2,739.00	3,054.00	3,359.00	3,655.00
17,000.00	1,737.00	2,412.00	2,743.00	3,058.00	3,364.00	3,660.00
17,050.00	1,740.00	2,416.00	2,747.00	3,062.00	3,369.00	3,665.00
17,100.00	1,743.00	2,419.00	2,750.00	3,067.00	3,373.00	3,670.00
17,150.00	1,745.00	2,423.00	2,754.00	3,071.00	3,378.00	3,675.00
17,200.00	1,748.00	2,426.00	2,758.00	3,075.00	3,383.00	3,680.00
17,250.00	1,751.00	2,430.00	2,762.00	3,079.00	3,387.00	3,685.00
17,300.00	1,753.00	2,433.00	2,766.00	3,084.00	3,392.00	3,691.00
17,350.00	1,756.00	2,437.00	2,769.00	3,088.00	3,397.00	3,696.00
17,400.00	1,759.00	2,440.00	2,773.00	3,092.00	3,401.00	3,701.00
17,450.00	1,761.00	2,444.00	2,777.00	3,096.00	3,406.00	3,706.00
17,500.00	1,764.00	2,447.00	2,781.00	3,101.00	3,411.00	3,711.00
17,550.00	1,767.00	2,451.00	2,785.00	3,105.00	3,415.00	3,716.00
17,600.00	1,769.00	2,454.00	2,788.00	3,109.00	3,420.00	3,721.00
17,650.00	1,772.00	2,458.00	2,792.00	3,113.00	3,425.00	3,726.00
17,700.00	1,774.00	2,461.00	2,796.00	3,118.00	3,429.00	3,731.00
17,750.00	1,777.00	2,465.00	2,800.00	3,122.00	3,434.00	3,736.00
17,800.00	1,780.00	2,468.00	2,804.00	3,126.00	3,439.00	3,741.00
17,850.00	1,782.00	2,472.00	2,808.00	3,130.00	3,443.00	3,746.00
17,900.00	1,785.00	2,475.00	2,811.00	3,135.00	3,448.00	3,752.00
17,950.00	1,788.00	2,478.00	2,815.00	3,139.00	3,453.00	3,757.00
18,000.00	1,790.00	2,482.00	2,819.00	3,143.00	3,457.00	3,762.00
18,050.00	1,793.00	2,485.00	2,823.00	3,147.00	3,462.00	3,767.00
18,100.00	1,796.00	2,489.00	2,827.00	3,152.00	3,467.00	3,772.00
18,150.00	1,798.00	2,492.00	2,830.00	3,156.00	3,471.00	3,777.00
18,200.00	1,801.00	2,496.00	2,834.00	3,160.00	3,476.00	3,782.00
18,250.00	1,804.00	2,499.00	2,838.00	3,164.00	3,481.00	3,787.00

Georgia Schedule of Basic Child Support Obligations						
Combined Adjusted Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
18,300.00	1,806.00	2,503.00	2,842.00	3,169.00	3,485.00	3,792.00
18,350.00	1,809.00	2,506.00	2,846.00	3,173.00	3,490.00	3,797.00
18,400.00	1,812.00	2,510.00	2,849.00	3,177.00	3,495.00	3,802.00
18,450.00	1,814.00	2,513.00	2,853.00	3,181.00	3,499.00	3,807.00
18,500.00	1,817.00	2,517.00	2,857.00	3,186.00	3,504.00	3,813.00
18,550.00	1,819.00	2,520.00	2,861.00	3,190.00	3,509.00	3,818.00
18,600.00	1,822.00	2,524.00	2,865.00	3,194.00	3,513.00	3,823.00
18,650.00	1,825.00	2,527.00	2,868.00	3,198.00	3,518.00	3,828.00
18,700.00	1,827.00	2,531.00	2,872.00	3,203.00	3,523.00	3,833.00
18,750.00	1,830.00	2,534.00	2,876.00	3,207.00	3,528.00	3,838.00
18,800.00	1,833.00	2,538.00	2,880.00	3,211.00	3,532.00	3,843.00
18,850.00	1,835.00	2,541.00	2,884.00	3,215.00	3,537.00	3,848.00
18,900.00	1,838.00	2,545.00	2,888.00	3,220.00	3,542.00	3,853.00
18,950.00	1,841.00	2,548.00	2,891.00	3,224.00	3,546.00	3,858.00
19,000.00	1,843.00	2,552.00	2,895.00	3,228.00	3,551.00	3,863.00
19,050.00	1,846.00	2,555.00	2,899.00	3,232.00	3,556.00	3,868.00
19,100.00	1,849.00	2,559.00	2,903.00	3,237.00	3,560.00	3,874.00
19,150.00	1,851.00	2,562.00	2,907.00	3,241.00	3,565.00	3,879.00
19,200.00	1,854.00	2,566.00	2,910.00	3,245.00	3,570.00	3,884.00
19,250.00	1,856.00	2,569.00	2,914.00	3,249.00	3,574.00	3,889.00
19,300.00	1,859.00	2,573.00	2,918.00	3,254.00	3,579.00	3,894.00
19,350.00	1,862.00	2,576.00	2,922.00	3,258.00	3,584.00	3,899.00
19,400.00	1,864.00	2,580.00	2,926.00	3,262.00	3,588.00	3,904.00
19,450.00	1,867.00	2,583.00	2,929.00	3,266.00	3,593.00	3,909.00
19,500.00	1,870.00	2,587.00	2,933.00	3,271.00	3,598.00	3,914.00
19,550.00	1,872.00	2,590.00	2,937.00	3,275.00	3,602.00	3,919.00
19,600.00	1,875.00	2,594.00	2,941.00	3,279.00	3,607.00	3,924.00
19,650.00	1,878.00	2,597.00	2,945.00	3,283.00	3,612.00	3,929.00
19,700.00	1,880.00	2,601.00	2,948.00	3,288.00	3,616.00	3,935.00
19,750.00	1,883.00	2,604.00	2,952.00	3,292.00	3,621.00	3,940.00
19,800.00	1,886.00	2,608.00	2,956.00	3,296.00	3,626.00	3,945.00
19,850.00	1,888.00	2,611.00	2,960.00	3,300.00	3,630.00	3,950.00
19,900.00	1,891.00	2,615.00	2,964.00	3,305.00	3,635.00	3,955.00
19,950.00	1,893.00	2,618.00	2,967.00	3,309.00	3,640.00	3,960.00
20,000.00	1,896.00	2,622.00	2,971.00	3,313.00	3,644.00	3,965.00

Georgia Schedule of Basic Child Support Obligations						
Combined Adjusted Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
20,050.00	1,899.00	2,625.00	2,975.00	3,317.00	3,649.00	3,970.00
20,100.00	1,901.00	2,628.00	2,979.00	3,321.00	3,654.00	3,975.00
20,150.00	1,904.00	2,632.00	2,983.00	3,326.00	3,658.00	3,980.00
20,200.00	1,907.00	2,635.00	2,987.00	3,330.00	3,663.00	3,985.00
20,250.00	1,909.00	2,639.00	2,990.00	3,334.00	3,668.00	3,990.00
20,300.00	1,912.00	2,642.00	2,994.00	3,338.00	3,672.00	3,996.00
20,350.00	1,915.00	2,646.00	2,998.00	3,343.00	3,677.00	4,001.00
20,400.00	1,917.00	2,649.00	3,002.00	3,347.00	3,682.00	4,006.00
20,450.00	1,920.00	2,653.00	3,006.00	3,351.00	3,686.00	4,011.00
20,500.00	1,923.00	2,656.00	3,009.00	3,355.00	3,691.00	4,016.00
20,550.00	1,925.00	2,660.00	3,013.00	3,360.00	3,696.00	4,021.00
20,600.00	1,928.00	2,663.00	3,017.00	3,364.00	3,700.00	4,026.00
20,650.00	1,931.00	2,667.00	3,021.00	3,368.00	3,705.00	4,031.00
20,700.00	1,933.00	2,670.00	3,025.00	3,372.00	3,710.00	4,036.00
20,750.00	1,936.00	2,674.00	3,028.00	3,377.00	3,714.00	4,041.00
20,800.00	1,938.00	2,677.00	3,032.00	3,381.00	3,719.00	4,046.00
20,850.00	1,941.00	2,681.00	3,036.00	3,385.00	3,724.00	4,051.00
20,900.00	1,944.00	2,684.00	3,040.00	3,389.00	3,728.00	4,056.00
20,950.00	1,946.00	2,688.00	3,044.00	3,394.00	3,733.00	4,062.00
21,000.00	1,949.00	2,691.00	3,047.00	3,398.00	3,738.00	4,067.00
21,050.00	1,952.00	2,695.00	3,051.00	3,402.00	3,742.00	4,072.00
21,100.00	1,954.00	2,698.00	3,055.00	3,406.00	3,747.00	4,077.00
21,150.00	1,957.00	2,702.00	3,059.00	3,411.00	3,752.00	4,082.00
21,200.00	1,960.00	2,705.00	3,063.00	3,415.00	3,756.00	4,087.00
21,250.00	1,962.00	2,709.00	3,067.00	3,419.00	3,761.00	4,092.00
21,300.00	1,965.00	2,712.00	3,070.00	3,423.00	3,766.00	4,097.00
21,350.00	1,968.00	2,716.00	3,074.00	3,428.00	3,770.00	4,102.00
21,400.00	1,970.00	2,719.00	3,078.00	3,432.00	3,775.00	4,107.00
21,450.00	1,973.00	2,723.00	3,082.00	3,436.00	3,780.00	4,112.00
21,500.00	1,975.00	2,726.00	3,086.00	3,440.00	3,784.00	4,117.00
21,550.00	1,978.00	2,730.00	3,089.00	3,445.00	3,789.00	4,123.00
21,600.00	1,981.00	2,733.00	3,093.00	3,449.00	3,794.00	4,128.00
21,650.00	1,983.00	2,737.00	3,097.00	3,453.00	3,798.00	4,133.00
21,700.00	1,986.00	2,740.00	3,101.00	3,457.00	3,803.00	4,138.00
21,750.00	1,989.00	2,744.00	3,105.00	3,462.00	3,808.00	4,143.00

Georgia Schedule of Basic Child Support Obligations						
Combined Adjusted Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
21,800.00	1,991.00	2,747.00	3,108.00	3,466.00	3,812.00	4,148.00
21,850.00	1,994.00	2,751.00	3,112.00	3,470.00	3,817.00	4,153.00
21,900.00	1,997.00	2,754.00	3,116.00	3,474.00	3,822.00	4,158.00
21,950.00	1,999.00	2,758.00	3,120.00	3,479.00	3,827.00	4,163.00
22,000.00	2,002.00	2,761.00	3,124.00	3,483.00	3,831.00	4,168.00
22,050.00	2,005.00	2,765.00	3,127.00	3,487.00	3,836.00	4,173.00
22,100.00	2,007.00	2,768.00	3,131.00	3,491.00	3,841.00	4,178.00
22,150.00	2,010.00	2,772.00	3,135.00	3,496.00	3,845.00	4,184.00
22,200.00	2,012.00	2,775.00	3,139.00	3,500.00	3,850.00	4,189.00
22,250.00	2,015.00	2,779.00	3,143.00	3,504.00	3,855.00	4,194.00
22,300.00	2,018.00	2,782.00	3,147.00	3,508.00	3,859.00	4,199.00
22,350.00	2,020.00	2,785.00	3,150.00	3,513.00	3,864.00	4,204.00
22,400.00	2,022.00	2,788.00	3,153.00	3,515.00	3,867.00	4,207.00
22,450.00	2,024.00	2,790.00	3,155.00	3,517.00	3,869.00	4,210.00
22,500.00	2,025.00	2,792.00	3,157.00	3,520.00	3,872.00	4,212.00
22,550.00	2,027.00	2,793.00	3,158.00	3,522.00	3,874.00	4,215.00
22,600.00	2,028.00	2,795.00	3,160.00	3,524.00	3,876.00	4,217.00
22,650.00	2,029.00	2,797.00	3,162.00	3,526.00	3,878.00	4,220.00
22,700.00	2,031.00	2,799.00	3,164.00	3,528.00	3,881.00	4,222.00
22,750.00	2,032.00	2,801.00	3,166.00	3,530.00	3,883.00	4,225.00
22,800.00	2,034.00	2,803.00	3,168.00	3,532.00	3,885.00	4,227.00
22,850.00	2,035.00	2,804.00	3,169.00	3,534.00	3,888.00	4,230.00
22,900.00	2,036.00	2,806.00	3,171.00	3,536.00	3,890.00	4,232.00
22,950.00	2,038.00	2,808.00	3,173.00	3,538.00	3,892.00	4,235.00
23,000.00	2,039.00	2,810.00	3,175.00	3,540.00	3,894.00	4,237.00
23,050.00	2,041.00	2,812.00	3,177.00	3,542.00	3,897.00	4,240.00
23,100.00	2,042.00	2,814.00	3,179.00	3,544.00	3,899.00	4,242.00
23,150.00	2,044.00	2,816.00	3,181.00	3,546.00	3,901.00	4,245.00
23,200.00	2,045.00	2,817.00	3,182.00	3,548.00	3,904.00	4,247.00
23,250.00	2,046.00	2,819.00	3,184.00	3,550.00	3,906.00	4,250.00
23,300.00	2,048.00	2,821.00	3,186.00	3,552.00	3,908.00	4,252.00
23,350.00	2,049.00	2,823.00	3,188.00	3,555.00	3,910.00	4,254.00
23,400.00	2,051.00	2,825.00	3,190.00	3,557.00	3,913.00	4,257.00
23,450.00	2,052.00	2,827.00	3,192.00	3,559.00	3,915.00	4,259.00
23,500.00	2,053.00	2,828.00	3,193.00	3,561.00	3,917.00	4,262.00

Georgia Schedule of Basic Child Support Obligations						
Combined Adjusted Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
23,550.00	2,055.00	2,830.00	3,195.00	3,563.00	3,919.00	4,264.00
23,600.00	2,056.00	2,832.00	3,197.00	3,565.00	3,922.00	4,267.00
23,650.00	2,058.00	2,834.00	3,199.00	3,567.00	3,924.00	4,269.00
23,700.00	2,059.00	2,836.00	3,201.00	3,569.00	3,926.00	4,272.00
23,750.00	2,061.00	2838.00	3,203.00	3,571.00	3,929.00	4,274.00
23,800.00	2,062.00	2,840.00	3,204.00	3,573.00	3,931.00	4,277.00
23,850.00	2,063.00	2,841.00	3,206.00	3,575.00	3,933.00	4,279.00
23,900.00	2,065.00	2,843.00	3,208.00	3,577.00	3,935.00	4,282.00
23,950.00	2,066.00	2,845.00	3,210.00	3,579.00	3,938.00	4,284.00
24,000.00	2,068.00	2,847.00	3,212.00	3,581.00	3,940.00	4,287.00
24,050.00	2,069.00	2,849.00	3,214.00	3,583.00	3,942.00	4,289.00
24,100.00	2,070.00	2,851.00	3,216.00	3,585.00	3,945.00	4,292.00
24,150.00	2,072.00	2,852.00	3,217.00	3,587.00	3,947.00	4,294.00
24,200.00	2,073.00	2,854.00	3,219.00	3,589.00	3,949.00	4,297.00
24,250.00	2,075.00	2,856.00	3,221.00	3,592.00	3,951.00	4,299.00
24,300.00	2,076.00	2,858.00	3,223.00	3,594.00	3,954.00	4,302.00
24,350.00	2,077.00	2,860.00	3,225.00	3,596.00	3,956.00	4,304.00
24,400.00	2,079.00	2,862.00	3,227.00	3,598.00	3,958.00	4,307.00
24,450.00	2,080.00	2,864.00	3,228.00	3,600.00	3,961.00	4,309.00
24,500.00	2,082.00	2,865.00	3,230.00	3,602.00	3,963.00	4,312.00
24,550.00	2,083.00	2,867.00	3,232.00	3,604.00	3,965.00	4,314.00
24,600.00	2,085.00	2,869.00	3,234.00	3,606.00	3,967.00	4,317.00
24,650.00	2,086.00	2,871.00	3,236.00	3,608.00	3,970.00	4,319.00
24,700.00	2,087.00	2,873.00	3,238.00	3,610.00	3,972.00	4,322.00
24,750.00	2,089.00	2,875.00	3,240.00	3,612.00	3,974.00	4,324.00
24,800.00	2,090.00	2,876.00	3,241.00	3,614.00	3,977.00	4,326.00
24,850.00	2,092.00	2,878.00	3,243.00	3,616.00	3,979.00	4,329.00
24,900.00	2,093.00	2,880.00	3,245.00	3,618.00	3,981.00	4,331.00
24,950.00	2,094.00	2,882.00	3,247.00	3,620.00	3,983.00	4,334.00
25,000.00	2,096.00	2,884.00	3,249.00	3,622.00	3,986.00	4,336.00
25,050.00	2,097.00	2,886.00	3,251.00	3,624.00	3,988.00	4,339.00
25,100.00	2,099.00	2,887.00	3,252.00	3,626.00	3,990.00	4,341.00
25,150.00	2,100.00	2,889.00	3,254.00	3,629.00	3,993.00	4,344.00
25,200.00	2,102.00	2,891.00	3,256.00	3,631.00	3,995.00	4,346.00
25,250.00	2,103.00	2,893.00	3,258.00	3,633.00	3,997.00	4,349.00

Georgia Schedule of Basic Child Support Obligations						
Combined Adjusted Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
25,300.00	2,104.00	2,895.00	3,260.00	3,635.00	3,999.00	4,351.00
25,350.00	2,106.00	2,897.00	3,262.00	3,637.00	4,002.00	4,354.00
25,400.00	2,107.00	2,899.00	3,264.00	3,639.00	4,004.00	4,356.00
25,450.00	2,109.00	2,900.00	3,265.00	3,641.00	4,006.00	4,359.00
25,500.00	2,110.00	2,902.00	3,267.00	3,643.00	4,009.00	4,361.00
25,550.00	2,111.00	2,904.00	3,269.00	3,645.00	4,011.00	4,364.00
25,600.00	2,113.00	2,906.00	3,271.00	3,647.00	4,013.00	4,366.00
25,650.00	2,114.00	2,908.00	3,273.00	3,649.00	4,015.00	4,369.00
25,700.00	2,116.00	2,910.00	3,275.00	3,651.00	4,018.00	4,371.00
25,750.00	2,117.00	2,911.00	3,276.00	3,653.00	4,020.00	4,374.00
25,800.00	2,119.00	2,913.00	3,278.00	3,655.00	4,022.00	4,376.00
25,850.00	2,120.00	2,915.00	3,280.00	3,657.00	4,024.00	4,379.00
25,900.00	2,121.00	2,917.00	3,282.00	3,659.00	4,027.00	4,381.00
25,950.00	2,123.00	2,919.00	3,284.00	3,661.00	4,029.00	4,384.00
26,000.00	2,124.00	2,921.00	3,286.00	3,663.00	4,031.00	4,386.00
26,050.00	2,126.00	2,923.00	3,287.00	3,666.00	4,034.00	4,389.00
26,100.00	2,127.00	2,924.00	3,289.00	3,668.00	4,036.00	4,391.00
26,150.00	2,128.00	2,926.00	3,291.00	3,670.00	4,038.00	4,394.00
26,200.00	2,130.00	2,928.00	3,293.00	3,672.00	4,040.00	4,396.00
26,250.00	2,131.00	2,930.00	3,295.00	3,674.00	4,043.00	4,399.00
26,300.00	2,133.00	2,932.00	3,297.00	3,676.00	4,045.00	4,401.00
26,350.00	2,134.00	2,934.00	3,299.00	3,678.00	4,047.00	4,403.00
26,400.00	2,136.00	2,935.00	3,300.00	3,680.00	4,050.00	4,406.00
26,450.00	2,137.00	2,937.00	3,302.00	3,682.00	4,052.00	4,408.00
26,500.00	2,138.00	2,939.00	3,304.00	3,684.00	4,054.00	4,411.00
26,550.00	2,140.00	2,941.00	3,306.00	3,686.00	4,056.00	4,413.00
26,600.00	2,141.00	2,943.00	3,308.00	3,688.00	4,059.00	4,416.00
26,650.00	2,143.00	2,945.00	3,310.00	3,690.00	4,061.00	4,418.00
26,700.00	2,144.00	2,947.00	3,311.00	3,692.00	4,063.00	4,421.00
26,750.00	2,145.00	2,948.00	3,313.00	3,694.00	4,066.00	4,423.00
26,800.00	2,147.00	2,950.00	3,315.00	3,698.00	4,068.00	4,426.00
26,850.00	2,148.00	2,952.00	3,317.00	3,698.00	4,070.00	4,428.00
26,900.00	2,150.00	2,954.00	3,319.00	3,701.00	4,072.00	4,431.00
26,950.00	2,151.00	2,956.00	3,321.00	3,703.00	4,075.00	4,433.00
27,000.00	2,153.00	2,958.00	3,323.00	3,705.00	4,077.00	4,436.00

Georgia Schedule of Basic Child Support Obligations						
Combined Adjusted Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
27,050.00	2,154.00	2,959.00	3,324.00	3,707.00	4,079.00	4,438.00
27,100.00	2,155.00	2,961.00	3,326.00	3,709.00	4,082.00	4,441.00
27,150.00	2,157.00	2,963.00	3,328.00	3,711.00	4,084.00	4,443.00
27,200.00	2,158.00	2,965.00	3,330.00	3,713.00	4,086.00	4,446.00
27,250.00	2,160.00	2,967.00	3,332.00	3,715.00	4,088.00	4,448.00
27,300.00	2,161.00	2,969.00	3,334.00	3,717.00	4,091.00	4,451.00
27,350.00	2,162.00	2,970.00	3,335.00	3,719.00	4,093.00	4,453.00
27,400.00	2,164.00	2,972.00	3,337.00	3,721.00	4,095.00	4,456.00
27,450.00	2,165.00	2,974.00	3,339.00	3,723.00	4,098.00	4,458.00
27,500.00	2,167.00	2,976.00	3,341.00	3,725.00	4,100.00	4,461.00
27,550.00	2,168.00	2,978.00	3,343.00	3,727.00	4,102.00	4,463.00
27,600.00	2,170.00	2,980.00	3,345.00	3,729.00	4,104.00	4,466.00
27,650.00	2,171.00	2,982.00	3,347.00	3,731.00	4,107.00	4,468.00
27,700.00	2,172.00	2,983.00	3,348.00	3,733.00	4,109.00	4,471.00
27,750.00	2,174.00	2,985.00	3,350.00	3,735.00	4,111.00	4,473.00
27,800.00	2,175.00	2,987.00	3,352.00	3,738.00	4,114.00	4,475.00
27,850.00	2,177.00	2,989.00	3,354.00	3,740.00	4,116.00	4,478.00
27,900.00	2,178.00	2,991.00	3,356.00	3,742.00	4,118.00	4,480.00
27,950.00	2,179.00	2,993.00	3,357.00	3,744.00	4,120.00	4,483.00
28,000.00	2,181.00	2,994.00	3,359.00	3,746.00	4,122.00	4,485.00
28,050.00	2,182.00	2,996.00	3,361.00	3,748.00	4,125.00	4,488.00
28,100.00	2,184.00	2,998.00	3,363.00	3,750.00	4,127.00	4,490.00
28,150.00	2,185.00	3,000.00	3,365.00	3,752.00	4,129.00	4,492.00
28,200.00	2,186.00	3,001.00	3,366.00	3,754.00	4,131.00	4,495.00
28,250.00	2,188.00	3,003.00	3,368.00	3,756.00	4,133.00	4,497.00
28,300.00	2,189.00	3,005.00	3,370.00	3,758.00	4,136.00	4,500.00
28,350.00	2,190.00	3,007.00	3,372.00	3,759.00	4,138.00	4,502.00
28,400.00	2,192.00	3,009.00	3,374.00	3,761.00	4,140.00	4,504.00
28,450.00	2,193.00	3,010.00	3,375.00	3,763.00	4,142.00	4,507.00
28,500.00	2,194.00	3,012.00	3,377.00	3,765.00	4,145.00	4,509.00
28,550.00	2,196.00	3,014.00	3,379.00	3,767.00	4,147.00	4,512.00
28,600.00	2,197.00	3,016.00	3,381.00	3,769.00	4,149.00	4,514.00
28,650.00	2,199.00	3,017.00	3,382.00	3,771.00	4,151.00	4,516.00
28,700.00	2,200.00	3,019.00	3,384.00	3,773.00	4,153.00	4,519.00
28,750.00	2,201.00	3,021.00	3,386.00	3,775.00	4,156.00	4,521.00

Georgia Schedule of Basic Child Support Obligations						
Combined Adjusted Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
28,800.00	2,203.00	3,023.00	3,388.00	3,777.00	4,158.00	4,524.00
28,850.00	2,204.00	3,025.00	3,390.00	3,779.00	4,160.00	4,526.00
28,900.00	2,205.00	3,026.00	3,391.00	3,781.00	4,162.00	4,528.00
28,950.00	2,207.00	3,028.00	3,393.00	3,783.00	4,164.00	4,531.00
29,000.00	2,208.00	3,030.00	3,395.00	3,785.00	4,167.00	4,533.00
29,050.00	2,210.00	3,032.00	3,397.00	3,787.00	4,169.00	4,536.00
29,100.00	2,211.00	3,034.00	3,398.00	3,789.00	4,171.00	4,538.00
29,150.00	2,212.00	3,035.00	3,400.00	3,791.00	4,173.00	4,540.00
29,200.00	2,214.00	3,037.00	3,402.00	3,793.00	4,175.00	4,543.00
29,250.00	2,215.00	3,039.00	3,404.00	3,795.00	4,178.00	4,545.00
29,300.00	2,216.00	3,041.00	3,406.00	3,797.00	4,180.00	4,548.00
29,350.00	2,218.00	3,042.00	3,407.00	3,799.00	4,182.00	4,550.00
29,400.00	2,219.00	3,044.00	3,409.00	3,801.00	4,184.00	4,552.00
29,450.00	2,220.00	3,046.00	3,411.00	3,803.00	4,186.00	4,555.00
29,500.00	2,222.00	3,048.00	3,413.00	3,805.00	4,189.00	4,557.00
29,550.00	2,223.00	3,050.00	3,415.00	3,807.00	4,191.00	4,560.00
29,600.00	2,225.00	3,051.00	3,416.00	3,809.00	4,193.00	4,562.00
29,650.00	2,226.00	3,053.00	3,418.00	3,811.00	4,195.00	4,564.00
29,700.00	2,227.00	3,055.00	3,420.00	3,813.00	4,197.00	4,567.00
29,750.00	2,229.00	3,057.00	3,422.00	3,815.00	4,200.00	4,569.00
29,800.00	2,230.00	3,058.00	3,423.00	3,817.00	4,202.00	4,572.00
29,850.00	2,231.00	3,060.00	3,425.00	3,819.00	4,204.00	4,574.00
29,900.00	2,233.00	3,062.00	3,427.00	3,821.00	4,206.00	4,576.00
29,950.00	2,234.00	3,064.00	3,429.00	3,823.00	4,208.00	4,579.00
30,000.00	2,236.00	3,066.00	3,431.00	3,825.00	4,211.00	4,581.00

(Ga. L. 1870, p. 413, § 2; Code 1873, § 1742; Code 1882, § 1742; Civil Code 1895, § 2462; Civil Code 1910, § 2981; Code 1933, § 30-207; Ga. L. 1979, p. 466, § 12; Ga. L. 1989, p. 861, § 1; Ga. L. 1991, p. 94, § 19; Ga. L. 1992, p. 1833, § 1; Ga. L. 1994, p. 1728, § 1; Ga. L. 1995, p. 603, § 2; Ga. L. 1996, p. 453, § 6; Ga. L. 2005, p. 224, § 5/HB 221; Ga. L. 2006, p. 72, § 19/SB 465; Ga. L. 2006, p. 583, § 4/SB 382; Ga. L. 2007, p. 47, § 19/SB 103; Ga. L. 2008, p. 272, §§ 1-9/SB 483; Ga. L. 2009, p. 96, §§ 1-6/HB 145; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2010, p. 878, § 19/HB 1387; Ga. L. 2011, p. 550, § 1/SB 115; Ga. L. 2014, p. 457, §§ 1-8/SB 282.)

The 2011 amendment, effective July 1, 2011, in paragraph (f)(2), deleted “and” from the end of division (f)(2)(B)(v), added present subparagraph (f)(2)(C), and redesignated former subparagraph (f)(2)(C) as subparagraph (f)(2)(D).

The 2014 amendment, effective July 1, 2014, rewrote this Code section.

Law reviews. — For annual survey of law on domestic relations, see 62 Mercer L. Rev. 105 (2010). For annual survey on domestic relations law, see 64 Mercer L. Rev. 121 (2012). For annual survey on domestic relations, see 65 Mercer L. Rev. 107 (2013).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
MODIFICATION OF AWARD
WRITING REQUIREMENT
EDUCATION OF CHILDREN

General Consideration

Application. — Statutory framework for establishing child support obligations is set forth in O.C.G.A. § 19-6-15, and paragraph (k)(1) provides that a parent may seek a modification of a prior child support decision when there is a substantial change in either parent’s income and financial status or the needs of the child. *Stoddard v. Meyer*, 291 Ga. 739, 732 S.E.2d 439 (2012).

Statute authorized lump sum child support awards. — Trial court did not err in ordering a husband to pay his entire child support obligation for the next 13 years in a single payment because nothing in the child support guidelines statute, O.C.G.A. § 19-6-15, expressly precluded lump-sum child support awards; the statute as amended explicitly authorizes trial courts to exercise discretion in setting the manner and timing of payment, and the language of § 19-6-15(c)(2)(B), which requires trial courts to specify in what manner, how often, to whom, and until when the support shall be paid is certainly broad enough to encompass an order to pay a child support obligation all at once. *Mullin v. Roy*, 287 Ga. 810, 700 S.E.2d 370 (2010).

Noncustodial parent receiving child support. — Georgia General Assembly has not specified that only non-custodial parents are to pay child support. *Williamson v. Williamson*, 293 Ga. 721, 748 S.E.2d 679 (2013).

Medical expenses. — Trial court did not abuse the court’s discretion in requir-

ing a husband to pay the entire cost of the child’s medical insurance and uncovered medical expenses because the child support worksheet incorporated into the trial court’s order clearly showed that an adjustment to the presumptive amounts of child support had been made to account for the expense of the premiums for the child’s insurance coverage; in accordance with O.C.G.A. § 19-6-15(h)(2)(A), and using the wife’s pro rata share of the parties’ combined income, 26 percent of the amount of the health insurance premium had been deducted from the husband’s basic child support obligation and added to the wife’s. *Simmons v. Simmons*, 288 Ga. 670, 706 S.E.2d 456 (2011).

Child care expenses. — Trial court did not abuse the court’s discretion in ordering the husband to reimburse the wife up to \$250 per month for work-related childcare expenses instead of allowing the husband to watch the children because the parties’ younger child was diagnosed with high-functioning autism and needed some special care; a few times when the younger child was solely in the husband’s care, the child wandered off and was left alone in situations where the child could have been hurt; and the wife testified that the children’s daycare provided the special care, attention, and consistency the younger child needed while allowing the younger child to stay in the company of the older brother who had a calming effect on the younger child. *Sahibzada v. Sahibzada*, 294 Ga. 783, 2014 Ga. LEXIS 219 (2014).

Expenses of nanny not excessive. — Court upheld an increase in child support owed by a mother, finding that the costs of a nanny were reasonable work-related child care expenses for the father, although he worked from home, considering the young age of the children, that the costs of a nanny were small in comparison to the father's monthly income, and the nanny's qualifications. *Taylor v. Taylor*, 293 Ga. 615, 748 S.E.2d 873 (2013).

Earning capacity rather than gross income, etc.

Trial court properly imputed income to the mother when calculating child support because the evidence showed that the mother was making \$32,000 and had health insurance available when the mother apparently made the decision to quit a job in Florida and move to Georgia to live with the mother's parents, and there was no evidence that the mother involuntarily left that employment. *Caldwell v. Meadows*, 312 Ga. App. 70, 717 S.E.2d 668 (2011).

K-1 income is self-employment income. — Because Internal Revenue Service Schedule K-1 income is categorized as self-employment income, O.C.G.A. § 19-6-15(f)(1)(B), that income is not subject to the requirements set forth in § 19-6-15(f)(1)(D) for variable income. *Simmons v. Simmons*, 288 Ga. 670, 706 S.E.2d 456 (2011).

Imputed income. — Trial court did not err by imputing income of \$4,180 per month to a father in addition to the \$1,320 in monthly unemployment benefits received based on evaluating the reasonableness of the father's occupational choices, the father's past employment, current assets, current monthly receipts, and self-imposed salary restrictions regarding a job search, which supported a finding that the father was willfully unemployed or underemployed under O.C.G.A. § 19-6-15(f)(4)(D). *Friday v. Friday*, 294 Ga. 687, 755 S.E.2d 707 (2014).

When considering wilful unemployment or underemployment under O.C.G.A. § 19-6-15(f)(4)(D), the statute does not require a trial court to make written findings as to why it decided to impute income to a spouse. *Friday v. Friday*, 294 Ga. 687, 755 S.E.2d 707 (2014).

No imputed income found. — Without some evidence of the amount of regular, ongoing gift income to the father, attributing to him a monthly lump-sum gift income of \$3,000 was not supported by the record. *Dodson v. Walraven*, 318 Ga. App. 586, 734 S.E.2d 428 (2012).

No deviation from guidelines.

Trial court did not abuse the court's discretion in declining to make a deviation to the presumptive amount of child support because under O.C.G.A. § 19-6-15(c)(2)(E)(iii) the trial court stated that the court did not find that the presumptive amount of child support was excessive or inadequate, or that it was unjust or inappropriate under the circumstances and also did not find that a downward deviation in the husband's support amount would be in the child's best interests; in order to grant any deviation, the trial court must find that the application of the presumptive amount of child support would be unjust or inappropriate and that the best interest of the child for whom support is being determined will be served by deviation from the presumptive amount of child support under § 19-6-15(c)(2)(E)(iii). *Willis v. Willis*, 288 Ga. 577, 707 S.E.2d 344 (2010).

In a mother's paternity suit to establish the legitimation, custody, and support of her minor child by the father who worked as an NFL football player, the trial court did not err in failing to allow for a high income deviation under O.C.G.A. § 19-6-15(i)(2)(A). The trial court considered the fact that the combined adjusted income of the parents exceeded \$30,000 per month by \$1,261.50, but exercised the court's discretion not to provide for a high income deviation. *Jackson v. Irvin*, 316 Ga. App. 560, 730 S.E.2d 48 (2012).

Payment of life insurance policies. — Trial court did not abuse the court's discretion by declining to consider the cost of the life insurance in calculating the parent's child support obligation because the evidence indicated that a parent's company, rather than the parent, paid the premiums on the parent's life insurance policies. *Simmons v. Simmons*, 288 Ga. 670, 706 S.E.2d 456 (2011).

Non-custodial parent should not receive child support. — Trial court erred

General Consideration (Cont'd)

by incorrectly starting with the father's presumptive amount of child support and incorrectly applying a parenting time deviation available only to the noncustodial parent under O.C.G.A. § 19-6-15(b)(1)-(7) when the court ordered the father to pay the non-custodial mother child support per month. *Williamson v. Williamson*, 293 Ga. 721, 748 S.E.2d 679 (2013).

Other children considered to vary final award.

Husband was entitled to a credit as a result of a child born to the husband and the husband's new wife. *Strunk v. Strunk*, 294 Ga. 280, 749 S.E.2d 701 (2013).

Fringe benefits properly included in gross income. — Trial court did not improperly include in a husband's gross income a company's payment on the loan for the husband's company-owned truck, the company's coverage of vehicle expenses, including gas, tags, insurance and repairs, the company's payment for the husband's cell phone, and the husband's use of a company-issued credit card because those benefits were properly considered fringe benefits and included in gross income under O.C.G.A. § 19-6-15(f)(1)(C) because those payments significantly reduced personal living expenses. *Simmons v. Simmons*, 288 Ga. 670, 706 S.E.2d 456 (2011).

Income from medical practice not counted twice in child support and property division awards. — Trial court did not erroneously count a husband's income twice by awarding portions of his business in the child support awards and again in the property division as "business alimony". Under both capitalization methods, the wife's expert deducted a reasonable salary expense for the husband. With the separate bases for the alimony award and the property division clearly acknowledged before the court, there was no double dipping. *Miller v. Miller*, 288 Ga. 274, 705 S.E.2d 839 (2010).

Deviation from guidelines.

Trial court erred in denying a wife's motion for a new trial, which argued that a divorce decree contained a deviation from the child support guidelines without

including any findings stating why the deviation was appropriate because the separation agreement between the wife and her husband, as well as the trial court's order incorporating that agreement, contained a deviation since there was, at least, an \$18 difference in the amount of child support mandated by the child support guidelines and that which was actually being paid by the parties, and the trial court's order contained none of the findings required by O.C.G.A. § 19-6-15; because the parties' separation agreement did not comply with the provisions contained in § 19-6-15 and did not contain findings of fact as required to support a deviation, the trial court should have rejected the agreement. *Holloway v. Holloway*, 288 Ga. 147, 702 S.E.2d 132 (2010).

In determining a father's child support obligation, the trial court erred in applying a nonspecific deviation from the presumptive amount of child support to account for his support obligations to another child because the current version of O.C.G.A. § 19-6-15 does not contemplate a specific variance of a child support award based on a party's support obligations to another household. The record failed to show that the father was paying any support for the subsequent child, and his ability to pay all of his child support obligations was a matter of speculation. *Jackson v. Irvin*, 316 Ga. App. 560, 730 S.E.2d 48 (2012).

Trial court erred in deviating from the presumptive child support calculation without including any findings. *Walls v. Walls*, 291 Ga. 757, 732 S.E.2d 407 (2012).

Trial court did not err in excluding sea pay in calculating the husband's gross income because the husband would not receive sea pay after his relocation. However, the trial court did not include written findings for its deviations for visitation related travel expenses as required under O.C.G.A. § 19-6-15(i). *Eldridge v. Eldridge*, 291 Ga. 762, 732 S.E.2d 411 (2012).

Trial court abused the court's discretion by ordering a deviation for life insurance premiums because the court failed to justify the deviation by setting forth the court's findings; thus, a remand was re-

quired on that issue. *Black v. Black*, 292 Ga. 691, 740 S.E.2d 613 (2013).

Deviation for visitation-related travel expenses was not an abuse of discretion on the part of the trial court because the mother had the option to remain with the children in the marital home for which the father was financially responsible, but chose instead to move to New York and incur unnecessary expenses. *Black v. Black*, 292 Ga. 691, 740 S.E.2d 613 (2013).

Trial court not required to calculate a discounted present value. — Trial court did not abuse the court's broad discretion in setting the amount of a child support award because nothing in the child support guidelines statute, O.C.G.A. § 19-6-15, mandated that the trial court calculate a discounted present value, and a husband did not propose or provide supporting evidence of a discount rate that better reflected the economic outlook; the trial court recognized the court's discretion to engage in a present value calculation but declined to do so, explaining that the husband failed to show that such a reduction would be appropriate in light of the current economic climate, one in which even the most secure financial investments offer extremely low rates of return. *Mullin v. Roy*, 287 Ga. 810, 700 S.E.2d 370 (2010).

Consideration of insurance premiums.

Trial court erred by ordering a parent to maintain health insurance on the parent's minor child because the court failed to account for the parent's payment of health insurance in calculating the parent's child support obligation. *Dupree v. Dupree*, 287 Ga. 319, 695 S.E.2d 628 (2010).

Gross income does not include employee benefits that are typically added to the salary, wage, or other compensation that a parent may receive as a standard added benefit, including, but not limited to, employer paid portions of health insurance premiums. *Hendry v. Hendry*, 292 Ga. 1, 734 S.E.2d 46 (2012).

Husband was properly awarded a credit for the cost of providing health insurance for the children. *Strunk v. Strunk*, 294 Ga. 280, 749 S.E.2d 701 (2013).

Determination of gross income proper.

Trial court did not abuse the court's

discretion in the court's review of a husband's history of Internal Revenue Service Schedule K-1 income because other amounts not actually received, e.g., payroll taxes, were included in gross income under O.C.G.A. § 19-6-15(f)(1)(A); the statutory guidelines provide only that income from a closely held corporation "should be carefully reviewed" when determining an appropriate level of gross income to use in calculating child support pursuant to § 19-6-15(f)(1)(B). *Simmons v. Simmons*, 288 Ga. 670, 706 S.E.2d 456 (2011).

Computation of child support proper. — Because the trial court properly found that the monthly net business profit listed on a husband's child support worksheet was the most credible calculation of his monthly income, and because a child's competitive cheerleading expenses were not a "necessity," the trial court properly awarded child support to the wife pursuant to O.C.G.A. § 19-6-15(f)(1)(B) and (i)(2)(J)(ii). *Ellis v. Ellis*, 290 Ga. 616, 724 S.E.2d 384 (2012).

Dismissal of modification petition adjudication on the merits. — Superior court erred in attempting to recast the court's dismissal of a husband's first petition for modification of child support as "simply a sanction" and not an adjudication on the merits so as to render the dismissal outside the ambit of O.C.G.A. § 19-6-15(k)(2) because in dismissing the husband's first petition for modification, the superior court did not specify that the order was not an adjudication on the merits, and under O.C.G.A. § 9-11-41(b), it was a final order on the claim for downward modification of child support. *Bagwell v. Bagwell*, 290 Ga. 378, 721 S.E.2d 847 (2012).

Improper use of erroneous facts on worksheets. — Mother was entitled to reversal of the trial court's order awarding no child support because the child support worksheets contained erroneous facts and the nonspecific deviations were erroneous; inaccurate factual data was plugged into the worksheets for the purpose of arriving at a pre-determined result that the trial judge announced at the hearing, to "zero out" any child obligations of the parties to each other. *Parker v. Parker*, 293 Ga. 300,

General Consideration (Cont'd)

745 S.E.2d 605 (2013).

Contempt finding. — Trial court did not abuse the court's discretion by finding that a father was in contempt for the failure to meet a support obligation because, under the decree, the father was to pay \$2,000 per month in child support and after December 15, 2010, following an involuntary job termination, the father was to pay was \$1,040 per month, but did not do so, paying only \$179 per month, or \$1,821 less than the original figure. *Friday v. Friday*, 294 Ga. 687, 755 S.E.2d 707 (2014).

Modification of Award

Modification was not retroactive to the filing of the petition. — Trial court did not err in imputing income of \$2,500 to an unemployed parent based on the parent's training and experience as a paralegal and the trial court's finding that the parent had failed to show efforts to obtain employment and was choosing not to work. The downward adjustment by the trial court was not retroactive to the date of the petition for modification; O.C.G.A. § 19-6-15(j) did not apply to this case, in which only modification of child support was sought. *Galvin v. Galvin*, 288 Ga. 125, 702 S.E.2d 155 (2010).

Petition for modification time-barred. — Parent's petition for downward modification of the parent's child support obligation should have been dismissed because the parent did not invoke the exception contained in O.C.G.A. § 19-6-15(k)(2)(C) in the parent's successive petition; the relevant time frame for the parent's alleged loss of income in excess of the statutory exception was from the date of the prior modification ruling, and the material allegations of the petition were essentially that of the prior petition for modification. *Bagwell v. Bagwell*, 290 Ga. 378, 721 S.E.2d 847 (2012).

Modification procedure not dependent upon public assistance.

In a child support modification action, the trial court erred in concluding that evidence of the need for additional support was necessary and that the Depart-

ment of Human Resources (DHR) lacked standing to file a modification action on behalf of a child not receiving public assistance unless the court could show the child's need for additional support, and in failing to apply the child support guidelines of O.C.G.A. § 19-6-15 and to justify any departure therefrom; by express statutory amendment, the General Assembly no longer reserved for the private bar those modification actions which involved children who did not receive public assistance and needed no additional support, but whose court-ordered provider enjoyed an enhanced financial status. *Falkenberry v. Taylor*, 278 Ga. 842, 607 S.E.2d 567 (2005) (Unpublished).

Trial court erred by requiring that an ex-wife refrain from applying for any government assistance for the children while the ex-wife receives child support from the ex-husband because it was an effort to make a predetermined finding with respect to a potential future modification and was unauthorized under O.C.G.A. § 19-6-15. *Singh v. Hammond*, 292 Ga. 579, 740 S.E.2d 126 (2013).

Modification outside range of guidelines.

Wife was entitled to an upward modification of child support because the wife presented evidence that the husband's gross monthly income had increased from \$8,898 to \$10,700.91 during the period between entry of the final divorce decree and the filing of the petition for modification and there was evidence that the husband's net worth had increased by almost three million dollars. That evidence supported the trial court's finding of a substantial change in income and financial status sufficient to authorize modification of the support award and supported the trial court's deviation from the presumptive amount of child support based on a parent's financial ability to provide for private school education. *Odom v. Odom*, 291 Ga. 811, 733 S.E.2d 741 (2012).

Modification must be tied to guidelines.

Trial court did not address whether there had been a change in the financial circumstances of the husband since the original child support award. If the husband's financial status had not substan-

tially changed, then no modification was appropriate, if modification was appropriate, then the court was required to use the child support guidelines to calculate the new amount. *Wetherington v. Wetherington*, 291 Ga. 722, 732 S.E.2d 433 (2012).

Modification with deviation from guidelines prohibited. — In the mother's petition to modify child support, there was no articulated basis for application of a specified discretionary deviation from the presumptive child support obligation because the history of the parties was not a ground for deviation in child support, and the modified physical custody awarded the father fell far short of being substantially equal to that with the mother. *Crook v. Crook*, 293 Ga. 867, 750 S.E.2d 334 (2013).

Modification properly denied.

Because two years had not elapsed from a prior court order disposing of an earlier petition for support modification filed by one parent, the trial court did not err when the court dismissed under O.C.G.A. § 19-6-15(k)(2) the portion of a petition seeking modification of the child-support award. *Avren v. Garten*, 289 Ga. 186, 710 S.E.2d 130 (2011).

Modification proper. — Trial court properly designated a father as the custodial parent pursuant to O.C.G.A. § 19-6-15(a)(9), and required the mother to pay child support to the father because it was undisputed that the child was spending equal time with the parents and that the mother had the higher income. *Stoddard v. Meyer*, 291 Ga. 739, 732 S.E.2d 439 (2012).

Determination that there had been a substantial change in the husband's income was not an abuse of discretion as the husband was employed in the mortgage industry, which had been unstable, downsizing, and affected by the recession, and while the husband earned \$48,000, rather than the \$75,000 imputed to the husband at the time of the divorce, the trial court imputed income of \$ 52,500 to the husband, because the husband accepted a lower base salary in exchange for the chance of advancement. *Strunk v. Strunk*, 294 Ga. 280, 749 S.E.2d 701 (2013).

Evidence did not support upward modification. — Trial court record was

devoid of evidence that a parent had the ability or means to earn an amount found by the trial court, such that the court's grant of the other parent's request for an upward modification of the parent's child support obligation could not stand; the evidence was uncontroverted that the parent's income and earning capacity had dramatically decreased. *Herrin v. Herrin*, 287 Ga. 427, 696 S.E.2d 626 (2010).

Increase of child support obligation improper. — Trial court abused the court's discretion in increasing a mother's child support obligation because the court failed to determine whether her income had substantially changed from the entry of the divorce decree pursuant to O.C.G.A. § 19-6-15(k)(4), and even if the trial court correctly disregarded the reduction in the mother's income, the evidence failed to show an increase in the mother's income since her divorce; while it appeared that the trial court modified the child support award consistent with existing child support guidelines, the court had no valid basis to do so. *Harris v. Williams*, 304 Ga. App. 390, 696 S.E.2d 131 (2010), overruled on other grounds, *Viskup v. Viskup*, 291 Ga. 103, 727 S.E.2d 97 (2012).

Annual payment of child support based on commissions. — Trial court, by including an additional child support provision requiring a father to pay an annual payment of 25 percent of his gross commissions on top of the presumptive child support amount, circumvented the requirement that a court only may deviate from the presumptive amount after making the necessary findings in O.C.G.A. § 19-6-15(i)(1)(B). *Stowell v. Huguenard*, 288 Ga. 628, 706 S.E.2d 419 (2011).

Accrual pending modification petition. — Father's child support obligation did not continue to accrue at the same rate after the mother was served with the father's petition to modify child support. Under O.C.G.A. § 19-6-15(j), support due before the entry of a modification order did not accrue to the extent that the obligation was based on the father's income from employment from which the father had been involuntarily terminated. *Morgan v. Bunzendahl*, 316 Ga. App. 338, 729 S.E.2d 476 (2012).

No duty to pay miscellaneous expenses when whole support order

Modification of Award (Cont'd)

modified. — Since the modification order encompassed and modified the entire child support obligation including the duty to pay miscellaneous expenses, and the order modified child support without deviation for miscellaneous expenses, the order did not leave the prior miscellaneous expense provision in full force and effect and the father could not be in contempt for failure to pay those expenses. *East v. Stephens*, 292 Ga. 604, 740 S.E.2d 156 (2013).

Remand of attorney fee award required. — In a child custody modification proceeding, the trial court erred by awarding attorney fees to the father in the amount of \$4,000 under O.C.G.A. § 19-9-3 as the award was not supported by the record since the trial court did not explain the statutory basis for the award and did not enter any findings necessary to support the award as required by O.C.G.A. § 19-6-15(k)(5). *Kuehn v. Key*, 325 Ga. App. 512, 754 S.E.2d 103 (2014).

Writing Requirement

Written findings required.

When a final child support order included a specific deviation for extraordinary educational expenses under O.C.G.A. § 19-6-15(i)(2)(J)(i), but the trial court failed to make the statutorily required written findings necessary to support the deviation, remand was required for a redetermination of the order, with any deviation to be based upon proper written findings. *Brogdon v. Brogdon*, 290 Ga. 618, 723 S.E.2d 421 (2012).

Order of modification deviating from the presumptive child support obligation was flawed because the modification failed to comply with the statutory requirements of supporting findings and documentation for a discretionary downward deviation in the amount of child support. *Crook v. Crook*, 293 Ga. 867, 750 S.E.2d 334 (2013).

Written finding of fact not required when the court orders the statutory presumptive amount.

Father failed to show that a trial court's

determination that the mother had no monthly gross income constituted a "deviation" that required the trial court to make findings of fact under O.C.G.A. § 19-6-15. The statute contemplated that a deviation was an increase or decrease from the presumptive amount of child support. *Kennedy v. Kennedy*, 309 Ga. App. 590, 711 S.E.2d 103 (2011).

Education of Children

Award of tuition outside of support award without necessary findings was unexplained deviation. — Trial court's order regarding child support did not comply with O.C.G.A. § 19-6-15(c)(2)(E) and (i)(1)(B) because the order failed to include the necessary findings; the trial court's award of tuition outside of the support award was an unexplained deviation. *Johnson v. Ware*, 313 Ga. App. 774, 723 S.E.2d 18 (2012).

Continuous full-time student.

Trial court erred when the court determined that a father's child-support obligation terminated because the child was not enrolled in and attending school on a full-time basis between June and August because the agreement between the father and the mother did not require the child's continuous attendance in school during the summer months but required only the child's full-time attendance in school; full-time school does not require attendance in school during the summer months. *Draughn v. Draughn*, 288 Ga. 734, 707 S.E.2d 52 (2011).

Child enrolled in online courses. — Trial court erred in finding that a child's enrollment in online courses did not satisfy a modification order's requirement that the child "attend" school in order to have the father pay child support beyond the child's attainment of majority; once a child enrolls in approved online courses in an effort to graduate from a secondary school, the child's online attendance constitutes "attending school" for purposes of extending child support beyond the child's attainment of the age of majority. *Draughn v. Draughn*, 288 Ga. 734, 707 S.E.2d 52 (2011).

19-6-17. Application for child support following custody award; service of petition; hearing; review; modification of order; enforcement; judgment.

Law reviews. — For annual survey of law on domestic relations, see 62 Mercer L. Rev. 105 (2010).

19-6-19. Revision of judgment for permanent alimony generally — When authorized; petition and hearing; cohabitation with third party as ground for revision; attorney’s fees; temporary modification pending final trial.

Law reviews. — For annual survey of law on appellate practice and procedure, see 62 Mercer L. Rev. 25 (2010). For article, “Live-In Lover Complaints: Think Twice Before You File,” see 19 Ga. St. B.J. 11 (Oct. 2013).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Cited in *Avren v. Garten*, 289 Ga. 186, 710 S.E.2d 130 (2011).

RESEARCH REFERENCES

ALR. — Retirement of husband as change of circumstances warranting modification of divorce decree — early retirement, 36 ALR6th 1.

19-6-26. Definitions; jurisdiction.

JUDICIAL DECISIONS

Jurisdiction over contempt motion. — Trial court erred by dismissing an ex-spouse’s motion for contempt for failure to pay child support, which was filed along with her motion to modify the parties’ divorce decree because when one court has rendered a divorce decree and a second court later acquires jurisdiction to modify the decree, the second court also has jurisdiction to entertain a motion for contempt of the original decree as a counterclaim to the petition to modify. *Ford v. Hanna*, 292 Ga. 500, 739 S.E.2d 309 (2013).
Cited in *Mullin v. Roy*, 287 Ga. 810, 700 S.E.2d 370 (2010).

19-6-28. Enforcement of orders; contempt; service of rule nisi by mail; rule nisi form.

JUDICIAL DECISIONS

Authority to enforce child support. — Given the court’s continuing, exclusive jurisdiction, a trial court possessed authority to enforce the child support provi-

sions of a divorce decree prospectively and as to past violations. In exercising that authority, the trial court, as a matter of Georgia law, was able to impose contempt

sanctions for willful violations of the court's decree. *Baars v. Freeman*, 288 Ga. 835, 708 S.E.2d 273 (2011).

19-6-28.1. Suspension of, or denial of application or renewal of, license for noncompliance with child support order.

Cross references. — Failure to pay child support prohibits licensure as money transmitter or payment instrument seller,

§ 7-1-693. Failure to pay child support prohibits licensure for cash payment instrument, § 7-1-708.1.

RESEARCH REFERENCES

ALR. — Validity, construction, and application of state statutes providing for

revocation of driver's license for failure to pay child support, 30 ALR6th 483.

19-6-34. Inclusion of life insurance in order of support.

JUDICIAL DECISIONS

Premium excluded from guidelines. — Trial court did not abuse the court's discretion by declining to consider the cost of the life insurance in calculating a parent's child support obligation because the evidence indicated that a parent's company, rather than the parent, paid the premiums on the parent's life insurance policies. *Simmons v. Simmons*, 288 Ga. 670, 706 S.E.2d 456 (2011).

proceeds; O.C.G.A. § 19-6-34(a) does not limit the value of any life insurance to the future child support obligation of the parent, and the amount is within the trial court's discretion. *Simmons v. Simmons*, 288 Ga. 670, 706 S.E.2d 456 (2011).

Parent required to maintain life insurance for child. — Trial court did not abuse the court's discretion in requiring a parent to maintain life insurance for the benefit of the child and by ordering the creation of a trust for any life insurance

Trial court did not err by ordering a husband's child support obligation to be secured by a life insurance policy for the support of the minor children because the trial court had discretion to require a parent, without the parent's agreement, to provide life insurance for the support of minor children pursuant to O.C.G.A. § 19-6-34. *Jarvis v. Jarvis*, 291 Ga. 818, 733 S.E.2d 747 (2012).

ARTICLE 2

GEORGIA CHILD SUPPORT COMMISSION

19-6-53. Duties; powers; authorization to retain professional services.

(a) The commission shall have the following duties:

- (1) To study and evaluate the effectiveness and efficiency of Georgia's child support guidelines;
- (2) To evaluate and consider the experiences and results in other states which utilize child support guidelines;

(3) To create and recommend to the General Assembly a child support obligation table consistent with Code Section 19-6-15;

(4) To determine periodically, and at least every four years, if the child support obligation table results in appropriate presumptive awards;

(5) To identify and recommend whether and when the child support obligation table or child support guidelines should be modified;

(6) To develop, publish in print or electronically, and update the child support obligation table and worksheets and schedules associated with the use of such table;

(7) To develop or cause to be developed software and a calculator associated with the use of the child support obligation table and child support guidelines and adjust the formula for the calculations of self-employed persons' income pursuant to applicable federal law, if the commission determines that the calculation affects persons paying or receiving child support in this state;

(8) To develop training manuals and information to educate judges, attorneys, and litigants on the use of the child support obligation table and child support guidelines;

(9) To collaborate with the Institute for Continuing Judicial Education, the Institute of Continuing Legal Education, and other agencies for the purpose of training persons who will be utilizing the child support obligation table and child support guidelines;

(10) To make recommendations for proposed legislation;

(11) To study the appellate courts' acceptance of discretionary appeals in domestic relations cases and the formulation of case law in the area of domestic relations;

(12) To study alternative programs, such as mediation, collaborative practice, and pro se assistance programs, in order to reduce litigation in child support and child custody cases; and

(13) To study the impact of having parenting time serve as a deviation to the presumptive amount of child support and make recommendations concerning the utilization of the parenting time adjustment.

(b) The commission shall have the following powers:

(1) To evaluate the child support guidelines in Georgia and any other program or matter relative to child support in Georgia;

(2) To request and receive data from and review the records of appropriate agencies to the greatest extent allowed by state and federal law;

- (3) To accept public or private grants, devises, and bequests;
- (4) To enter into all contracts or agreements necessary or incidental to the performance of its duties;
- (5) To establish rules and procedures for conducting the business of the commission; and
- (6) To conduct studies, hold public meetings, collect data, or take any other action the commission deems necessary to fulfill its responsibilities.

(c) The commission shall be authorized to retain the services of auditors, attorneys, financial consultants, child care experts, economists, and other individuals or firms as determined appropriate by the commission. (Code 1981, § 19-6-53, enacted by Ga. L. 2005, p. 224, § 11/HB 221; Ga. L. 2006, p. 583, § 6/SB 382; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2014, p. 457, § 9/SB 282.)

The 2014 amendment, effective July 1, 2014, in subsection (a), substituted the present provisions of paragraph (a)(3) for the former provisions, which read: “(A) To create and recommend to the General Assembly a child support obligation table consistent with Code Section 19-6-15. Prior to January 1, 2006, the commission shall produce the child support obligation table and provide an explanation of the underlying data and assumptions to the General Assembly by delivering copies to the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

“(B)(i) The child support obligation table shall include deductions from a parent’s gross income for the employee’s share of the contributions for the first 6.2 percent in Federal Insurance Contributions Act (FICA) and 1.45 percent in medicare taxes.

“(ii) FICA tax withholding for high-income persons may vary during the

year. Six and two-tenths percent is withheld on the first \$90,000.00 of gross earnings. After the maximum \$5,580.00 is withheld, no additional FICA taxes shall be withheld.

“(iii) Self-employed persons are required by law to pay the full FICA tax of 12.4 percent up to the \$90,000.00 gross earnings limit and the full medicare tax rate of 2.9 percent on all earned income.

“(iv) The percentages and dollar amounts established or referenced in this subparagraph with respect to the payment of self-employment taxes shall be adjusted by the commission, as necessary, as relevant changes occur in the federal tax laws;”; substituted “four years” for “two years” in paragraph (a)(4); and added “and adjust the formula for the calculations of self-employed persons’ income pursuant to applicable federal law, if the commission determines that the calculation affects persons paying or receiving child support in this state” at the end of paragraph (a)(7).

CHAPTER 7

PARENT AND CHILD RELATIONSHIP GENERALLY

Article 1		Sec.	
General Provisions			
Sec.			tent of report; to whom made; immunity from liability; report based upon privileged communication; penalty for failure to report.
19-7-1.	In whom parental power lies; how such power lost; recovery for homicide of child.		
19-7-3.	"Grandparent" defined; original actions for visitation rights or intervention; revocation or amendment of visitation rights; appointment of guardian ad litem; mediation; hearing; notification of grandchild's participation in events.		
19-7-5.	Reporting of child abuse; when mandated or authorized; con-		

Article 2
Legitimacy

19-7-22.	Petition for legitimization of child; requirement that mother be named as a party; court order; effect; claims for custody or visitation; third-party action for legitimization in response to petition to establish paternity.
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ARTICLE 1

GENERAL PROVISIONS

19-7-1. In whom parental power lies; how such power lost; recovery for homicide of child.

(a) Until a child reaches the age of 18 or becomes emancipated, the child shall remain under the control of his or her parents, who are entitled to the child's services and the proceeds of the child's labor. In the event that a court has awarded custody of the child to one parent, only the parent who has custody of the child is entitled to the child's services and the proceeds of the child's labor.

(b) Parental power shall be lost by:

- (1) Voluntary contract releasing the right to a third person;
- (2) Consent to the adoption of the child by a third person;
- (3) Failure to provide necessities for the child or abandonment of the child;
- (4) Consent to the child's receiving the proceeds of his own labor, which consent shall be revocable at any time;
- (5) Consent to the marriage of the child, who thus assumes inconsistent responsibilities;
- (6) Cruel treatment of the child;

(7) A superior court order terminating parental rights in an adoption proceeding in accordance with Chapter 8 of this title; or

(8) A superior court order terminating parental rights of the legal father or the biological father who is not the legal father of the child in a petition for legitimation, a petition to establish paternity, a divorce proceeding, or a custody proceeding pursuant to this chapter or Chapter 5, 8, or 9 of this title, provided that such termination is in the best interest of such child; and provided, further, that this paragraph shall not apply to such termination when a child has been adopted or is conceived by artificial insemination as set forth in Code Section 19-7-21 or when an embryo is adopted as set forth in Article 2 of Chapter 8 of this title.

(b.1) Notwithstanding subsections (a) and (b) of this Code section or any other law to the contrary, in any action involving the custody of a child between the parents or either parent and a third party limited to grandparent, great-grandparent, aunt, uncle, great aunt, great uncle, sibling, or adoptive parent, parental power may be lost by the parent, parents, or any other person if the court hearing the issue of custody, in the exercise of its sound discretion and taking into consideration all the circumstances of the case, determines that an award of custody to such third party is for the best interest of the child or children and will best promote their welfare and happiness. There shall be a rebuttable presumption that it is in the best interest of the child or children for custody to be awarded to the parent or parents of such child or children, but this presumption may be overcome by a showing that an award of custody to such third party is in the best interest of the child or children. The sole issue for determination in any such case shall be what is in the best interest of the child or children.

(c)(1) In every case of the homicide of a child, minor or sui juris, there shall be some party entitled to recover the full value of the life of the child, either as provided in this Code section or as provided in Chapter 4 of Title 51.

(2) If the deceased child does not leave a spouse or child, the right of recovery shall be in the parent or parents, if any, given such a right by this paragraph as follows:

(A) If the parents are living together and not divorced, the right shall be in the parents jointly;

(B) If either parent is deceased, the right shall be in the surviving parent; or

(C) If both parents are living but are divorced, separated, or living apart, the right shall be in both parents. However, if the parents are divorced, separated, or living apart and one parent

refuses to proceed or cannot be located to proceed to recover for the wrongful death of a child, the other parent shall have the right to contract for representation on behalf of both parents, thereby binding both parents, and the right to proceed on behalf of both parents to recover for the homicide of the child with any ultimate recovery to be shared by the parents as provided in this subsection. Unless a motion is filed as provided in paragraph (6) of this subsection, such a judgment shall be divided equally between the parents by the judgment; and the share of an absent parent shall be held for such time, on such terms, and with such direction for payment if the absent parent is not found as the judgment directs. Payment of a judgment awarded to the parent or parents having the cause of action under this subparagraph or the execution of a release by a parent or parents having a cause of action under this subparagraph shall constitute a full and complete discharge of the judgment debtor or releasee. If, after two years from the date of any recovery, the share of an absent parent has not been paid to the absent parent, the other parent can petition the court for the funds, and the recovery, under appropriate court order, shall be paid over to the parent who initiated the recovery.

(3) The intent of this subsection is to provide a right of recovery in every case of the homicide of a child who does not leave a spouse or child. If, in any case, there is no right of action in a parent or parents under the above rules, the right of recovery shall be determined by Code Section 51-4-5.

(4) In this subsection the terms “homicide” and “full value of the life” shall have the meaning given them in Chapter 4 of Title 51.

(5) In actions for recovery, the fact that the child was born out of wedlock shall be no bar to recovery.

(6) For cases in which the parents of a deceased child are divorced, separated, or living apart, a motion may be filed by either parent prior to trial requesting the judge to apportion fairly any judgment amounts awarded in the case. Where such a motion is filed, a judgment shall not be automatically divided. A postjudgment hearing shall be conducted by the judge at which each parent shall have the opportunity to be heard and to produce evidence regarding that parent’s relationship with the deceased child. The judge shall fairly determine the percentage of the judgment to be awarded to each parent. In making such a determination, the judge shall consider each parent’s relationship with the deceased child, including permanent custody, control, and support, as well as any other factors found to be pertinent. The judge’s decision shall not be disturbed absent an abuse of discretion. (Orig. Code 1863, § 1744; Code 1868, § 1784; Code 1873, § 1793; Code 1882, § 1793; Civil Code 1895, § 2502; Civil

Code 1910, § 3021; Code 1933, § 74-108; Ga. L. 1979, p. 466, § 43; Ga. L. 1980, p. 1154, § 1; Ga. L. 1987, p. 619, § 1; Ga. L. 1988, p. 1720, § 3; Ga. L. 1991, p. 94, § 19; Ga. L. 1996, p. 412, § 1; Ga. L. 2000, p. 1509, § 1; Ga. L. 2006, p. 141, § 4/HB 847; Ga. L. 2010, p. 878, § 19/HB 1387; Ga. L. 2013, p. 294, § 4-22/HB 242; Ga. L. 2014, p. 780, § 1-47/SB 364.)

The 2013 amendment, effective January 1, 2014, deleted “or” at the end of paragraph (b)(5), substituted a semicolon for a period at the end of paragraph (b)(6), and added paragraphs (b)(7) and (b)(8). See editor’s note for applicability.

The 2014 amendment, effective April 28, 2014, substituted “Chapter 5” for “Chapter 6” near the middle of paragraph (b)(8).

Editor’s notes. — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: “This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring

before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions.”

Law reviews. — For annual survey on domestic relations law, see 64 Mercer L. Rev. 121 (2012). For annual survey on domestic relations, see 65 Mercer L. Rev. 107 (2013).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

CUSTODY

1. IN GENERAL
2. CUSTODY RIGHTS AS BETWEEN PARENTS
3. CUSTODY RIGHTS AS BETWEEN PARENTS AND THIRD PARTIES

TORT RECOVERY

1. INTRAFAMILY IMMUNITY

General Consideration

Statute inapplicable following death of parents. — Superior court erred in granting an aunt and uncle custody of minor children because the court lacked subject matter jurisdiction to consider the petition for custody since a probate court had exclusive jurisdiction to issue and revoke letters of testamentary guardianship, and O.C.G.A. § 29-2-4(b) mandated the issuance of letters of testamentary guardianship to the brother of the children’s father without notice and a hearing and without consideration of the children’s best interests; O.C.G.A. § 19-7-1 was inapplicable because the

statute was limited to a custody action between a parent and specified relatives, and the children’s parents were deceased. *Zinkhan v. Bruce*, 305 Ga. App. 510, 699 S.E.2d 833 (2010).

Grandparents’ rights.

Under O.C.G.A. § 19-7-1(b.1), grandparents were entitled to custody of their two grandchildren given the children’s special needs due to autism and developmental delays and the parents’ denial of the children’s problems and inability to care for the children. *Whitehead v. Myers* (In the Interest of D. W.), 311 Ga. App. 680, 716 S.E.2d 785 (2011).

Cited in *Morris v. Morris*, 309 Ga. App. 387, 710 S.E.2d 601 (2011).

Custody

1. In General

Probate letters of guardianship did not impact jurisdiction. — Paternal grandmother's letters of temporary guardianship that were issued by a probate court did not foreclose a maternal grandmother's filing of a petition for permanent custody, and did not serve as a tool to dismiss the ongoing custody proceeding; the letters had no impact on the trial court's jurisdiction to entertain the custody petition. *Barfield v. Butterworth*, 323 Ga. App. 156, 746 S.E.2d 819 (2013).

2. Custody Rights as Between Parents

Adopting parent on equal footing as biological. — Reading O.C.G.A. § 19-7-1(b.1) in pari materia with the Georgia statutes granting adoptive parents rights and obligations equal to those of a biological parent, the Supreme Court of Georgia concludes that for a court to award custody to an adoptive parent over a biological parent, only the statutory showing is required. *Hastings v. Hastings*, 291 Ga. 782, 732 S.E.2d 272 (2012).

3. Custody Rights as Between Parents and Third Parties

Dispute between parent and third party.

Since a previous visitation order related to the grandparent's right to visitation, not custody, and the legal issues to be decided varied, the trial court properly determined that res judicata did not bar the grandparents' petition for custody under the Uniform Child Jurisdiction and Custody Act, O.C.G.A. § 19-9-40 et seq.; the Act does not provide that the judgment is conclusive as to all issues which could have been put in issue. *Scott v. Scott*, 311 Ga. App. 726, 716 S.E.2d 809 (2011).

Trial court erroneously concluded that grandparents' petition seeking custody of a mother's children failed to state a claim because the custody petition gave fair notice that the grandparents sought custody of the child under O.C.G.A. §§ 19-7-1(b.1) and 19-9-2 based upon the

mother's alleged murder of the father; those allegations were sufficient to survive a motion to dismiss. *Scott v. Scott*, 311 Ga. App. 726, 716 S.E.2d 809 (2011).

In a Georgia action to modify an Alaska child custody determination, which was entered pursuant to an agreement of the parties, the Georgia trial court did not apply the correct best interest of the child standard of proof under O.C.G.A. § 19-7-1(b.1), and instead erroneously placed the Durden standard of proof on the mother. The Durden standard did not apply because there had not been a permanent award of custody to a third party made pursuant to an evidentiary hearing with specific findings by clear and convincing evidence of present parental unfitness. *Lopez v. Olson*, 314 Ga. App. 533, 724 S.E.2d 837 (2012).

Award of joint custody to third party.

Because the trial court applied the correct legal standard in O.C.G.A. § 19-7-1(b.1) in finding that the natural parent presumption was rebutted and that awarding custody to the grandparents was in the child's best interests, and because the grandparents were properly permitted to intervene under O.C.G.A. § 9-11-24(a)(2), the mother was not entitled to appellate relief. *Trotter v. Ayres*, 315 Ga. App. 7, 726 S.E.2d 424 (2012), cert. denied, No. S12C1206, 2012 Ga. LEXIS 666 (Ga. 2012).

Differing standards in visitation and custody issues. — Trial court properly determined that collateral estoppel did not bar the grandparents' petition for custody of a mother's children because different issues were actually and necessarily decided in the grandparents' visitation action; in the visitation action, the issues were harm to the child if visitation was not granted and whether visitation would be in the best interest of the children, and in the custody action, the issues were whether the children would suffer physical or emotional harm if custody remained with the mother. *Scott v. Scott*, 311 Ga. App. 726, 716 S.E.2d 809 (2011).

Standard is child's best interest when deciding between grandparents. — Maternal grandmother's petition for custody over a child, which also in-

Custody (Cont'd)

3. Custody Rights as Between Parents and Third Parties (Cont'd)

volved the paternal grandmother due to her intervention in the matter after securing letters of temporary guardianship, involved a determination as to what was in the child's best interest. *Barfield v. Butterworth*, 323 Ga. App. 156, 746 S.E.2d 819 (2013).

No discretion to award custody to stepfather. — It was error for a trial court to award a child's legal and physical custody to the child's stepfather because: (1) the child's mother was permitted to exercise all parental power over the child, since the child's father had not legitimated the child under O.C.G.A. § 19-7-22; (2) the stepfather had not adopted the child; and (3) as a result, the stepfather did not have the same status as any of the nonparents specified in O.C.G.A. § 19-7-1(b.1), leaving the trial court with no discretion to award the child's custody to the stepfather. *Phillips v. Phillips*, 316 Ga. App. 829, 730 S.E.2d 548 (2012).

Placement with grandparents appropriate. — There was clear and convincing evidence that a child would suffer physical and emotional harm if placed with either biological parent, as required by O.C.G.A. § 19-7-1(b.1), based on the presence of drugs, alcohol, violence, arrests in the home, and the mother's failure

to send the child to kindergarten, allowing placement of the child with the child's grandparents. *Harris v. Snelgrove*, 290 Ga. 181, 718 S.E.2d 300 (2011).

Joint placement with grandparents and father appropriate. — Award of custody to the father and the paternal grandparents was supported by evidence that the child had significant mental health issues, many of which were the result of the high conflict between the mother and the father, and that the mother promoted the conflict by the mother's efforts to alienate the child from the father and the father's family, the mother failed to set limits or discipline the child, and the mother failed to recognize or deal with the child's disruptive behavior. *Mauldin v. Mauldin*, 322 Ga. App. 507, 745 S.E.2d 754 (2013).

Tort Recovery

1. Intrafamily Immunity

Parent driving under the influence. — While a mother was driving under the influence of alcohol at the time of the automobile accident in which her son was injured, she did not commit a malicious or willful act of such cruelty so as to authorize forfeiture of parental authority; accordingly, pursuant to O.C.G.A. § 19-7-1, neither the son nor the father were entitled to relief. *Donegan v. Davis*, 310 Ga. App. 446, 714 S.E.2d 49 (2011).

19-7-2. Parents' obligations to child.

JUDICIAL DECISIONS

ANALYSIS

APPLICATION

1. IN GENERAL

Application

1. In General

Application to termination of parental rights.

While the evidence showed that a mother failed to pay child support while her son was in foster care, the juvenile court did not address whether that failure

was "without justifiable cause," as required by former O.C.G.A. § 15-11-94(b)(4)(C) (see now O.C.G.A. § 15-11-310) in order to authorize the termination of the mother's rights. There was nothing in the numerous reunification plans, progress reports, and court orders that notified the mother of her obligation to pay child support, let alone

any notice of how much to pay, when, and to whom. In the Interest of D. P., 2014 Ga. App. LEXIS 127 (Mar. 11, 2014).

19-7-3. “Grandparent” defined; original actions for visitation rights or intervention; revocation or amendment of visitation rights; appointment of guardian ad litem; mediation; hearing; notification of grandchild’s participation in events.

(a) As used in this Code section, the term “grandparent” means the parent of a parent of a minor child, the parent of a minor child’s parent who has died, and the parent of a minor child’s parent whose parental rights have been terminated.

(b)(1) Except as otherwise provided in paragraph (2) of this subsection, any grandparent shall have the right to file an original action for visitation rights to a minor child or to intervene in and seek to obtain visitation rights in any action in which any court in this state shall have before it any question concerning the custody of a minor child, a divorce of the parents or a parent of such minor child, a termination of the parental rights of either parent of such minor child, or visitation rights concerning such minor child or whenever there has been an adoption in which the adopted child has been adopted by the child’s blood relative or by a stepparent, notwithstanding the provisions of Code Section 19-8-19.

(2) This subsection shall not authorize an original action where the parents of the minor child are not separated and the child is living with both parents.

(c)(1) Upon the filing of an original action or upon intervention in an existing proceeding under subsection (b) of this Code section, the court may grant any grandparent of the child reasonable visitation rights if the court finds the health or welfare of the child would be harmed unless such visitation is granted and if the best interests of the child would be served by such visitation. In considering whether the health or welfare of the child would be harmed without such visitation, the court shall consider and may find that harm to the child is reasonably likely to result where, prior to the original action or intervention:

(A) The minor child resided with the grandparent for six months or more;

(B) The grandparent provided financial support for the basic needs of the child for at least one year;

(C) There was an established pattern of regular visitation or child care by the grandparent with the child; or

(D) Any other circumstance exists indicating that emotional or physical harm would be reasonably likely to result if such visitation is not granted.

The court shall make specific written findings of fact in support of its rulings.

(2) An original action requesting visitation rights shall not be filed by any grandparent more than once during any two-year period and shall not be filed during any year in which another custody action has been filed concerning the child. After visitation rights have been granted to any grandparent, the legal custodian, guardian of the person, or parent of the child may petition the court for revocation or amendment of such visitation rights, for good cause shown, which the court, in its discretion, may grant or deny; but such a petition shall not be filed more than once in any two-year period.

(3) While a parent's decision regarding grandparent visitation shall be given deference by the court, the parent's decision shall not be conclusive when failure to provide grandparent contact would result in emotional harm to the child. A court may presume that a child who is denied any contact with his or her grandparent or who is not provided some minimal opportunity for contact with his or her grandparent may suffer emotional injury that is harmful to such child's health. Such presumption shall be a rebuttable presumption.

(4) In no case shall the granting of visitation rights to a grandparent interfere with a child's school or regularly scheduled extracurricular activities. Visitation time awarded to a grandparent shall not be less than 24 hours in any one-month period.

(d) Notwithstanding the provisions of subsections (b) and (c) of this Code section, if one of the parents of a minor child dies, is incapacitated, or is incarcerated, the court may award the parent of the deceased, incapacitated, or incarcerated parent of such minor child reasonable visitation to such child during his or her minority if the court in its discretion finds that such visitation would be in the best interests of the child. The custodial parent's judgment as to the best interests of the child regarding visitation shall be given deference by the court but shall not be conclusive.

(e) If the court finds that the grandparent or grandparents can bear the cost without unreasonable financial hardship, the court, at the sole expense of the petitioning grandparent or grandparents, may:

(1) Appoint a guardian ad litem for the minor child; and

(2) Assign the issue of visitation rights of a grandparent for mediation.

(f) In the event that the court does not order mediation or upon failure of the parties to reach an agreement through mediation, the court shall fix a time for the hearing of the issue of visitation rights of the grandparent or grandparents.

(g) Whether or not visitation is awarded to a grandparent, the court may direct a custodial parent, by court order, to notify such grandparent of every performance of the minor child to which the public is admitted, including, but not limited to, musical concerts, graduations, recitals, and sporting events or games. (Ga. L. 1976, p. 247, § 1; Ga. L. 1980, p. 936, § 1; Ga. L. 1981, p. 1318, § 1; Ga. L. 1986, p. 10, § 19; Ga. L. 1986, p. 1516, § 1; Ga. L. 1988, p. 864, § 1; Ga. L. 1990, p. 1572, § 4; Ga. L. 1993, p. 456, § 1; Ga. L. 1996, p. 1089, § 1; Ga. L. 2012, p. 860, § 1/HB 1198.)

The 2012 amendment, effective May 1, 2012, in subsection (b), added the paragraph designations, inserted “paragraph (2) of” in paragraph (b)(1) and deleted “of the” preceding “parents” at the end of paragraph (b)(2); in subsection (c), added the paragraph designations, deleted a comma following “granted” and added the last sentence to paragraph (c)(1), added subparagraphs (c)(1)(A) through (c)(1)(D), in the present undesignated paragraph of paragraph (c)(1), deleted the former last

sentence, which read: “There shall be no presumption in favor of visitation by any grandparent.”, and added paragraphs (c)(3) and (c)(4); added present subsection (d); redesignated former subsections (d) and (e) as present subsections (e) and (f), respectively; and added subsection (g).

Law reviews. — For annual survey on domestic relations law, see 64 Mercer L. Rev. 121 (2012). For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 320 (2012).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION APPLICATION

General Consideration

Construction of word “parent”. — Limiting language of O.C.G.A. § 19-7-3(b), forbidding original actions for grandparent visitation if the parents are together and living with the child, includes adoptive parents because in the absence of language limiting the term “parent” to only “natural parents” or “biological parents,” there is no legislative intent to withhold from adoptive parents the same constitutionally protected status enjoyed by biological parents to raise their children without state interference, and in construing O.C.G.A. § 19-7-3(b), the definition of parent in the adoption statute, O.C.G.A. § 19-8-1(6) and (8), which gives full legal status to adoptive parents, can-

not be ignored; grandparents may have a sincere, beneficent interest in participating in their grandchildren’s lives, and this interest often coincides with the best interest of the child, but beyond constitutional considerations, policy decisions addressing disputes between grandparents and parents are the province of the legislature. *Bailey v. Kunz*, 307 Ga. App. 710, 706 S.E.2d 98 (2011), *aff’d*, 290 Ga. 361, 720 S.E.2d 634 (2012).

Grandparents’ rights not affected by stepparent adoption. — Because O.C.G.A. § 19-8-19 provides for the termination of all legal relationships between an adopted child and his or her relatives, under O.C.G.A. § 19-7-3(b), grandparents’ rights are not affected by an adoption by a stepparent. *Lightfoot v. Hollins*, 308

General Consideration (Cont'd)

Ga. App. 538, 707 S.E.2d 491 (2011), overruled on other grounds, *Kunz v. Bailey*, 290 Ga. 361, 720 S.E.2d 634 (2012).

Specific findings of fact required.

Trial court erred in failing to rule upon a maternal grandfather's request for visitation with a mother's child because the trial court was required to apply O.C.G.A. § 19-7-3(c) and determine whether the grandfather had presented clear and convincing evidence that the health or welfare of the child would be harmed unless visitation was granted and whether the child's best interests would be served by allowing such visitation. *Sheppard v. McCraney*, 317 Ga. App. 91, 730 S.E.2d 721 (2012).

Trial court erred in failing to show that the court applied the proper evidentiary standard and in failing to include written findings of fact to support the court's broad, conclusory ruling, as required by O.C.G.A. § 19-7-3(c)(1); the trial court stated only that the court had considered the entire record before concluding that the grandmother had shown, pursuant to § 19-7-3, that the health and welfare of the minor child would be harmed unless visitation was provided for the child with the grandmother. *Van Leuvan v. Carlisle*, 322 Ga. App. 576, 745 S.E.2d 814 (2013).

Cited in *Scott v. Scott*, 311 Ga. App. 726, 716 S.E.2d 809 (2011).

Application

When grandparents are not entitled to relief.

Trial court erred in denying a motion filed by a child's mother and stepfather to dismiss a paternal grandparents' petition for visitation with the child because the petition was not authorized, and the trial court erred by interpreting the word "parent" in O.C.G.A. § 19-7-3(b) to include only biological parents; the child's father surrendered his parental rights, the stepfather adopted the child, and the mother and stepfather lived with the child. *Bailey v. Kunz*, 307 Ga. App. 710, 706 S.E.2d 98 (2011), *aff'd*, 290 Ga. 361, 720 S.E.2d 634 (2012).

Visitation rights precluded when child adopted by stepfather.

Term "parents" in O.C.G.A. § 19-7-3(b)

did not exclude a child's adoptive parent; therefore, because a child was living with the child's mother and adoptive father, who were not separated, the child's natural grandparents had no right to file an original action for visitation with the child under the statute. Upon their son's termination of his parental rights to the child, the grandparents became strangers to the child, pursuant to O.C.G.A. § 19-8-19. *Kunz v. Bailey*, 290 Ga. 361, 720 S.E.2d 634 (2012).

Efforts at grandparent visitation thwarted by parent. — Trial court did not err in denying a father's motion for summary judgment in maternal grandparents' action seeking visitation with his child pursuant to O.C.G.A. § 19-7-3(b) because the trial court had the discretion to choose to allow the case to go forward under O.C.G.A. § 9-11-56(f) in order for the guardian ad litem to investigate the facts since the lack of a relationship between the grandparents and the child could or could not be the fault of the grandparents when there was some evidence that the father had thwarted attempts at visitation in the early years following the mother's death; although the grandparents' affidavits in opposition to the father's motion for summary judgment contained information about the child's best interests, the grandparents did not provide any direct evidence of harm that the child would suffer as a result of not having visitation with the grandparents, but instead, the grandparents relied on O.C.G.A. § 9-11-56(f) and the trial court's appointment of a guardian ad litem under O.C.G.A. § 19-7-3(d)(1) to argue that the facts needed to be further developed and that a decision on summary judgment was premature. *Lightfoot v. Hollins*, 308 Ga. App. 538, 707 S.E.2d 491 (2011), overruled on other grounds, *Kunz v. Bailey*, 290 Ga. 361, 720 S.E.2d 634 (2012).

Mother was a proper party to a maternal grandfather's action seeking visitation with the mother's child, and the mother's objection to the grandfather's request for visitation was pertinent to the claim under O.C.G.A. § 19-7-3 because the award of temporary guardianship and custody of

the child to the paternal grandparents did not terminate the mother's rights or confer permanent guardianship or custody. *Sheppard v. McCraney*, 317 Ga. App. 91, 730 S.E.2d 721 (2012).

Visitation to father's sister improper. — Trial court erred in granting a father's sister visitation because the sister was neither a grandparent seeking visitation nor a family member seeking custody but was a non-party to the mother's action seeking child support and the father's counterclaim for legitimation. *Morris v. Morris*, 309 Ga. App. 387, 710 S.E.2d 601 (2011).

Trial court required to make findings of fact. — Trial court erred in dismissing a paternal grandmother's petition for visitation with three minor grandchildren who had been adopted by their stepfather because the trial court was required to determine if the parents were separated and whether the child was living with both of the parents. If the parents

were separated and the child was not living with both of the parents, O.C.G.A. § 19-7-3 would authorize the grandmother to seek visitation. *Hudgins v. Harding*, 313 Ga. App. 613, 722 S.E.2d 355 (2012).

To resolve the issue of visitation, a trial court is required to apply O.C.G.A. § 19-7-3(c) in the court's determination of whether a grandparent has presented clear and convincing evidence that the child's health or welfare would be harmed unless visitation was granted, and whether such visitation was in the child's best interests with the inclusion of specific written findings of fact supported by clear and convincing record evidence being mandatory to justify a grant of visitation. Therefore, the trial court erred by awarding a biological grandmother visitation when the court failed to make the specific findings of fact. *Esasky v. Ford*, 321 Ga. App. 891, 743 S.E.2d 550 (2013).

19-7-5. Reporting of child abuse; when mandated or authorized; content of report; to whom made; immunity from liability; report based upon privileged communication; penalty for failure to report.

(a) The purpose of this Code section is to provide for the protection of children whose health and welfare are adversely affected and further threatened by the conduct of those responsible for their care and protection. It is intended that the mandatory reporting of such cases will cause the protective services of the state to be brought to bear on the situation in an effort to prevent further abuses, to protect and enhance the welfare of these children, and to preserve family life wherever possible. This Code section shall be liberally construed so as to carry out the purposes thereof.

(b) As used in this Code section, the term:

(1) "Abortion" shall have the same meaning as set forth in Code Section 15-11-681.

(2) "Abused" means subjected to child abuse.

(3) "Child" means any person under 18 years of age.

(4) "Child abuse" means:

(A) Physical injury or death inflicted upon a child by a parent or caretaker thereof by other than accidental means; provided, how-

ever, that physical forms of discipline may be used as long as there is no physical injury to the child;

(B) Neglect or exploitation of a child by a parent or caretaker thereof;

(C) Sexual abuse of a child; or

(D) Sexual exploitation of a child.

However, no child who in good faith is being treated solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone, be considered to be an “abused” child.

(5) “Child service organization personnel” means persons employed by or volunteering at a business or an organization, whether public, private, for profit, not for profit, or voluntary, that provides care, treatment, education, training, supervision, coaching, counseling, recreational programs, or shelter to children.

(6) “Clergy” means ministers, priests, rabbis, imams, or similar functionaries, by whatever name called, of a bona fide religious organization.

(7) “Pregnancy resource center” means an organization or facility that:

(A) Provides pregnancy counseling or information as its primary purpose, either for a fee or as a free service;

(B) Does not provide or refer for abortions;

(C) Does not provide or refer for FDA approved contraceptive drugs or devices; and

(D) Is not licensed or certified by the state or federal government to provide medical or health care services and is not otherwise bound to follow federal Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, or other state or federal laws relating to patient confidentiality.

(8) “Reproductive health care facility” means any office, clinic, or any other physical location that provides abortions, abortion counseling, abortion referrals, or gynecological care and services.

(9) “School” means any public or private pre-kindergarten, elementary school, secondary school, technical school, vocational school, college, university, or institution of postsecondary education.

(10) “Sexual abuse” means a person’s employing, using, persuading, inducing, enticing, or coercing any minor who is not that person’s spouse to engage in any act which involves:

(A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(B) Bestiality;

(C) Masturbation;

(D) Lewd exhibition of the genitals or pubic area of any person;

(E) Flagellation or torture by or upon a person who is nude;

(F) Condition of being fettered, bound, or otherwise physically restrained on the part of a person who is nude;

(G) Physical contact in an act of apparent sexual stimulation or gratification with any person's clothed or unclothed genitals, pubic area, or buttocks or with a female's clothed or unclothed breasts;

(H) Defecation or urination for the purpose of sexual stimulation; or

(I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.

"Sexual abuse" shall not include consensual sex acts involving persons of the opposite sex when the sex acts are between minors or between a minor and an adult who is not more than five years older than the minor. This provision shall not be deemed or construed to repeal any law concerning the age or capacity to consent.

(11) "Sexual exploitation" means conduct by any person who allows, permits, encourages, or requires that child to engage in:

(A) Prostitution, as defined in Code Section 16-6-9; or

(B) Sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct, as defined in Code Section 16-12-100.

(c)(1) The following persons having reasonable cause to believe that a child has been abused shall report or cause reports of that abuse to be made as provided in this Code section:

(A) Physicians licensed to practice medicine, physician assistants, interns, or residents;

(B) Hospital or medical personnel;

(C) Dentists;

(D) Licensed psychologists and persons participating in internships to obtain licensing pursuant to Chapter 39 of Title 43;

(E) Podiatrists;

(F) Registered professional nurses or licensed practical nurses licensed pursuant to Chapter 26 of Title 43 or nurse's aides;

(G) Professional counselors, social workers, or marriage and family therapists licensed pursuant to Chapter 10A of Title 43;

(H) School teachers;

(I) School administrators;

(J) School guidance counselors, visiting teachers, school social workers, or school psychologists certified pursuant to Chapter 2 of Title 20;

(K) Child welfare agency personnel, as that agency is defined pursuant to Code Section 49-5-12;

(L) Child-counseling personnel;

(M) Child service organization personnel;

(N) Law enforcement personnel; or

(O) Reproductive health care facility or pregnancy resource center personnel and volunteers.

(2) If a person is required to report child abuse pursuant to this subsection because that person attends to a child pursuant to such person's duties as an employee of or volunteer at a hospital, school, social agency, or similar facility, that person shall notify the person in charge of the facility, or the designated delegate thereof, and the person so notified shall report or cause a report to be made in accordance with this Code section. An employee or volunteer who makes a report to the person designated pursuant to this paragraph shall be deemed to have fully complied with this subsection. Under no circumstances shall any person in charge of such hospital, school, agency, or facility, or the designated delegate thereof, to whom such notification has been made exercise any control, restraint, modification, or make other change to the information provided by the reporter, although each of the aforementioned persons may be consulted prior to the making of a report and may provide any additional, relevant, and necessary information when making the report.

(d) Any other person, other than one specified in subsection (c) of this Code section, who has reasonable cause to believe that a child is abused may report or cause reports to be made as provided in this Code section.

(e) An oral report shall be made immediately, but in no case later than 24 hours from the time there is reasonable cause to believe a child has been abused, by telephone or otherwise and followed by a report in writing, if requested, to a child welfare agency providing protective services, as designated by the Department of Human Services, or, in the

absence of such agency, to an appropriate police authority or district attorney. If a report of child abuse is made to the child welfare agency or independently discovered by the agency, and the agency has reasonable cause to believe such report is true or the report contains any allegation or evidence of child abuse, then the agency shall immediately notify the appropriate police authority or district attorney. Such reports shall contain the names and addresses of the child and the child's parents or caretakers, if known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, and any other information that the reporting person believes might be helpful in establishing the cause of the injuries and the identity of the perpetrator. Photographs of the child's injuries to be used as documentation in support of allegations by hospital employees or volunteers, physicians, law enforcement personnel, school officials, or employees or volunteers of legally mandated public or private child protective agencies may be taken without the permission of the child's parent or guardian. Such photographs shall be made available as soon as possible to the chief welfare agency providing protective services and to the appropriate police authority.

(f) Any person or persons, partnership, firm, corporation, association, hospital, or other entity participating in the making of a report or causing a report to be made to a child welfare agency providing protective services or to an appropriate police authority pursuant to this Code section or any other law or participating in any judicial proceeding or any other proceeding resulting therefrom shall in so doing be immune from any civil or criminal liability that might otherwise be incurred or imposed, provided such participation pursuant to this Code section or any other law is made in good faith. Any person making a report, whether required by this Code section or not, shall be immune from liability as provided in this subsection.

(g) Suspected child abuse which is required to be reported by any person pursuant to this Code section shall be reported notwithstanding that the reasonable cause to believe such abuse has occurred or is occurring is based in whole or in part upon any communication to that person which is otherwise made privileged or confidential by law; provided, however, that a member of the clergy shall not be required to report child abuse reported solely within the context of confession or other similar communication required to be kept confidential under church doctrine or practice. When a clergy member receives information about child abuse from any other source, the clergy member shall comply with the reporting requirements of this Code section, even though the clergy member may have also received a report of child abuse from the confession of the perpetrator.

(h) Any person or official required by subsection (c) of this Code section to report a suspected case of child abuse who knowingly and willfully fails to do so shall be guilty of a misdemeanor.

(i) A report of child abuse or information relating thereto and contained in such report, when provided to a law enforcement agency or district attorney pursuant to subsection (e) of this Code section or pursuant to Code Section 49-5-41, shall not be subject to public inspection under Article 4 of Chapter 18 of Title 50 even though such report or information is contained in or part of closed records compiled for law enforcement or prosecution purposes unless:

(1) There is a criminal or civil court proceeding which has been initiated based in whole or in part upon the facts regarding abuse which are alleged in the child abuse reports and the person or entity seeking to inspect such records provides clear and convincing evidence of such proceeding; or

(2) The superior court in the county in which is located the office of the law enforcement agency or district attorney which compiled the records containing such reports, after application for inspection and a hearing on the issue, shall permit inspection of such records by or release of information from such records to individuals or entities who are engaged in legitimate research for educational, scientific, or public purposes and who comply with the provisions of this paragraph. When those records are located in more than one county, the application may be made to the superior court of any one of such counties. A copy of any application authorized by this paragraph shall be served on the office of the law enforcement agency or district attorney which compiled the records containing such reports. In cases where the location of the records is unknown to the applicant, the application may be made to the Superior Court of Fulton County. The superior court to which an application is made shall not grant the application unless:

(A) The application includes a description of the proposed research project, including a specific statement of the information required, the purpose for which the project requires that information, and a methodology to assure the information is not arbitrarily sought;

(B) The applicant carries the burden of showing the legitimacy of the research project; and

(C) Names and addresses of individuals, other than officials, employees, or agents of agencies receiving or investigating a report of abuse which is the subject of a report, shall be deleted from any information released pursuant to this subsection unless the court determines that having the names and addresses open for review is essential to the research and the child, through his or her representative, gives permission to release the information. (Code 1933, § 74-111, enacted by Ga. L. 1965, p. 588, § 1; Ga. L. 1968, p. 1196,

§ 1; Ga. L. 1973, p. 309, § 1; Ga. L. 1974, p. 438, § 1; Ga. L. 1977, p. 242, §§ 1-3; Ga. L. 1978, p. 2059, §§ 1, 2; Ga. L. 1980, p. 921, § 1; Ga. L. 1981, p. 1034, §§ 1-3; Ga. L. 1988, p. 1624, § 1; Ga. L. 1990, p. 1761, § 1; Ga. L. 1993, p. 1695, §§ 1, 1.1; Ga. L. 1994, p. 97, § 19; Ga. L. 1999, p. 81, § 19; Ga. L. 2006, p. 485, § 1/SB 442; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2009, p. 733, § 1/SB 69; Ga. L. 2012, p. 899, § 5-1/HB 1176; Ga. L. 2013, p. 141, § 19/HB 79; Ga. L. 2013, p. 294, § 4-23/HB 242; Ga. L. 2013, p. 524, § 2-1/HB 78.)

The 2012 amendment, effective July 1, 2012, in subsection (b), added present paragraph (b)(1), redesignated former paragraphs (b)(1) through (b)(3) as present paragraphs (b)(2) through (b)(4), respectively, inserted “that” in present subparagraph (b)(4)(A), added paragraphs (b)(5) through (b)(9), redesignated former paragraphs (b)(3.1) and (b)(4) as present paragraphs (b)(10) and (b)(11), respectively; added “or nurse’s aides” at the end in subparagraph (c)(1)(F); deleted “or” at the end of subparagraph (c)(1)(M), substituted “; or” for a period at the end of subparagraph (c)(1)(N), and added subparagraph (c)(1)(O); in paragraph (c)(2), in the first sentence, inserted “child”, and substituted “an employee of or volunteer at” for “a member of the staff of”, and substituted “An employee or volunteer” for “A staff member” at the beginning of the second sentence; in subsection (e), twice substituted “employees or volunteers” for “staff”, and substituted “photographs” for “photograph” at the beginning of the fifth sentence; at the end of subsection (g), inserted the proviso at the end of the first sentence, and added the last sentence. See editor’s note for applicability.

The 2013 amendments. — The first 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted “Chapter 26” for “Chapter 24” in subparagraph (c)(1)(F). The second 2013 amendment, effective January 1, 2014, substituted “Code Section 15-11-681” for “Code Section 15-11-111” in paragraph (b)(1). The

third 2013 amendment, effective July 1, 2013, inserted “physician assistants,” in subparagraph (c)(1)(A). See editor’s notes for applicability.

Editor’s notes. — Ga. L. 2012, p. 899, § 9-1(a)/HB 1176, not codified by the General Assembly, provides: “This Act shall become effective on July 1, 2012, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2012, shall be governed by the statute in effect at the time of such offense and shall be considered a prior conviction for the purpose of imposing a sentence that provides for a different penalty for a subsequent conviction for the same type of offense, of whatever degree or level, pursuant to this Act.”

Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: “This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions.”

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 290 (2012).

JUDICIAL DECISIONS

No immunity for false reports of child abuse. — Trial court did not err in granting a protective order under O.C.G.A. § 16-5-90(a)(1) against a foster parent who had placed a family under extensive surveillance through a combination of Internet searches and third party observations of the family's home and contacted law enforcement, causing groundless investigations. The foster parent was not immune from liability under O.C.G.A. § 19-7-5(f) because the foster parent had not received any information that a child in the home had been subjected to abuse. *Owen v. Watts*, 307 Ga. App. 493, 705 S.E.2d 852 (2010).

Refusal to give jury instruction proper. — Trial court did not err by refusing to charge the jury regarding O.C.G.A. § 19-7-5 because the defendant cited no authority in support of the defendant's proposition that the trial court erred in refusing to give the instruction; the individual whom the defendant alleged failed to report the abuse as required by the statute was not a witness at trial, and the issue was irrelevant to the jury's determination of the defendant's guilt. *Hamrick v. State*, 304 Ga. App. 378, 696 S.E.2d 403 (2010).

ARTICLE 2

LEGITIMACY

19-7-20. What children are legitimate; disproving legitimacy; legitimation by marriage of parents and recognition of child.

JUDICIAL DECISIONS

ANALYSIS

APPLICATION

Application

Intervention in legitimation proceeding. — Trial court erred in granting a putative biological father's legitimation petition while a husband's timely, meritorious motion to intervene of right under O.C.G.A. § 9-11-24(a) was pending because when the husband moved to intervene in the legitimation proceeding he was the child's legal father and had parental and custodial rights to the child, and the husband clearly had an interest in the legitimation proceeding; the husband's interest as the child's legal father would be impaired by a decision of the trial court that was unfavorable to him, and his

interest was not adequately represented by the parties to the action since the child's mother consented to the legitimation action. *Baker v. Lankford*, 306 Ga. App. 327, 702 S.E.2d 666 (2010).

Denial of petition proper. — Trial court properly denied the father's petition to legitimate a child since the father abandoned the father's interest when the father took no action during the wife's pregnancy or birth and did not seek to legitimate the child until more than five years after receiving the DNA results. *Matthews v. Dukes*, 314 Ga. App. 782, 726 S.E.2d 95 (2012), overruled on other grounds, *Brine v. Shipp*, 291 Ga. 376, 729 S.E.2d 393 (2012).

19-7-21. When children conceived by artificial insemination legitimate.

Law reviews. — For note, “It Takes a Village: Considering the Other Interests at Stake When Extending Inheritance

Rights to Posthumously Conceived Children,” see 44 Ga. L. Rev. 873 (2010).

19-7-21.1. “Acknowledgment of legitimation” and “legal father” defined; signing acknowledgment of legitimation; when acknowledgment not recognized; making false statement; rescinding acknowledgment.

JUDICIAL DECISIONS

Adoption petition failed to address statutory factors. — In a step-father’s appeal, a trial court erred by denying the step-father’s petition for adoption because the adoption petition did not address the issue of whether the biological father was a parent of the child for purposes of the adoption statutes, O.C.G.A. §§ 19-7-21.1(a)(2)(F) and 19-8-1(6). *Allifi v. Raider*, 323 Ga. App. 510, 746 S.E.2d 763 (2013).

Denial of petition for legitimation improperly set aside. — Trial court

erred by setting aside the denial of a biological father’s petition for legitimation because the voluntary acknowledgment of paternity preempted the denial as the father failed to make the trial court aware of the acknowledgment and could not subsequently use the document to set aside the trial court’s final judgment. *Allifi v. Raider*, 323 Ga. App. 510, 746 S.E.2d 763 (2013).

Cited in *Ray v. Hann*, 323 Ga. App. 45, 746 S.E.2d 600 (2013).

19-7-22. Petition for legitimation of child; requirement that mother be named as a party; court order; effect; claims for custody or visitation; third-party action for legitimation in response to petition to establish paternity.

(a) A father of a child born out of wedlock may render his relationship with the child legitimate by petitioning the superior court of the county of the residence of the child’s mother or other party having legal custody or guardianship of the child; provided, however, that if the mother or other party having legal custody or guardianship of the child resides outside the state or cannot, after due diligence, be found within the state, the petition may be filed in the county of the father’s residence or the county of the child’s residence. If a petition for the adoption of the child is pending, the father shall file the petition for legitimation in the county in which the adoption petition is filed.

(b) The petition shall set forth the name, age, and sex of the child, the name of the mother, and, if the father desires the name of the child to be changed, the new name. If the mother is alive, she shall be named as a party and shall be served and provided an opportunity to be heard as in other civil actions under Chapter 11 of Title 9, the “Georgia Civil Practice Act.”

(c) Upon the presentation and filing of the petition, the court may pass an order declaring the father's relationship with the child to be legitimate, and that the father and child shall be capable of inheriting from each other in the same manner as if born in lawful wedlock and specifying the name by which the child shall be known.

(d) A legitimation petition may be filed, pursuant to Code Section 15-11-11, in the juvenile court of the county in which a dependency proceeding regarding the child is pending.

(e) Except as provided by subsection (f) of this Code section, the court shall upon notice to the mother further establish such duty as the father may have to support the child, considering the facts and circumstances of the mother's obligation of support and the needs of the child as provided under Code Section 19-6-15.

(f) After a petition for legitimation is granted, if a demand for a jury trial as to support has been properly filed by either parent, then the case shall be transferred from juvenile court to superior court for such jury trial.

(f.1) The petition for legitimation may also include claims for visitation, parenting time, or custody. If such claims are raised in the legitimation action, the court may order, in addition to legitimation, visitation, parenting time, or custody based on the best interests of the child standard. In a case involving allegations of family violence, the provisions of paragraph (4) of subsection (a) of Code Section 19-9-3 shall also apply.

(g)(1) In any petition to establish paternity pursuant to paragraph (4) of subsection (a) of Code Section 19-7-43, the alleged father's response may assert a third-party action for the legitimation of the child born out of wedlock. Upon the determination of paternity or if a voluntary acknowledgment of paternity has been made and has not been rescinded pursuant to Code Section 19-7-46.1, the court or trier of fact as a matter of law and pursuant to the provisions of Code Section 19-7-51 may enter an order or decree legitimating a child born out of wedlock, provided that such is in the best interest of the child. Whenever a petition to establish the paternity of a child is brought by the Department of Human Services, issues of name change, visitation, and custody shall not be determined by the court until such time as a separate petition is filed by one of the parents or by the legal guardian of the child, in accordance with Code Section 19-11-8; if the petition is brought by a party other than the Department of Human Services or if the alleged father seeks legitimation, the court may determine issues of name change, visitation, and custody in accordance with subsections (b) and (f.1) of this Code section. Custody of the child shall remain in the mother unless or until a court order is entered addressing the issue of custody.

(2) In any voluntary acknowledgment of paternity which has been made and has not been rescinded pursuant to Code Section 19-7-46.1, when both the mother and father freely agree and consent, the child may be legitimated by the inclusion of a statement indicating a voluntary acknowledgment of legitimation. (Orig. Code 1863, § 1738; Code 1868, § 1778; Code 1873, § 1787; Code 1882, § 1787; Civil Code 1895, § 2494; Civil Code 1910, § 3013; Code 1933, § 74-103; Ga. L. 1985, p. 279, § 2; Ga. L. 1988, p. 1720, § 5; Ga. L. 1989, p. 441, § 1; Ga. L. 1997, p. 1613, § 14; Ga. L. 1997, p. 1681, § 5; Ga. L. 2000, p. 20, § 10; Ga. L. 2005, p. 1491, § 1/SB 53; Ga. L. 2007, p. 554, § 6/HB 369; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2013, p. 294, § 4-24/HB 242.)

The 2013 amendment, effective January 1, 2014, in subsection (d), substituted “Code Section 15-11-11” for “paragraph (2) of subsection (e) of Code Section 15-11-28” near the beginning, and substituted “dependency” for “deprivation” near the end. See editor’s note for applicability.

Editor’s notes. — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: “This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and

after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions.”

JUDICIAL DECISIONS

Failure to file civil case filing form not fatal to legitimation petition. — Putative biological father’s failure to pay a filing fee and a civil case filing form required by O.C.G.A. § 9-11-3(b) was not fatal to the father’s legitimation claim because the clerk, when asked by the father, did not require payment of a filing fee, and the father’s attorney merely followed the procedure suggested by the clerk. *Brewton v. Poss*, 316 Ga. App. 704, 728 S.E.2d 837 (2012).

Denial of motion to sever improper. — Trial court abused the court’s discretion by denying a putative biological father’s motion to sever his petition for legitimation of a son from a husband’s adoption proceeding because the father’s petition substantially complied with the substance of the legitimation statute, O.C.G.A. § 19-7-22; the petition contained the requisite information, it was served on the wife, and it was timely filed in the proper court, and the father’s failure to file his

petition as a separate civil action caused no prejudice to anyone. *Brewton v. Poss*, 316 Ga. App. 704, 728 S.E.2d 837 (2012).

Denial of petition improperly set aside. — Trial court erred by setting aside the denial of a biological father’s petition for legitimation because the voluntary acknowledgment of paternity preempted the denial as the father failed to make the trial court aware of the acknowledgment and could not subsequently use the document to set aside the trial court’s final judgment. *Allifi v. Raider*, 323 Ga. App. 510, 746 S.E.2d 763 (2013).

Stepfather could not be awarded custody. — It was error for a trial court to award a child’s legal and physical custody to the child’s stepfather because: (1) the child’s mother was permitted to exercise all parental power over the child since the child’s father had not legitimated the child under O.C.G.A. § 19-7-22; (2) the stepfather had not adopted the child; and (3) as a result, the stepfather did not have the

same status as any of the nonparents specified in O.C.G.A. § 19-7-1(b.1), leaving the trial court with no discretion to award the child's custody to the stepfather. *Phillips v. Phillips*, 316 Ga. App. 829, 730 S.E.2d 548 (2012).

Petitions for legitimation separate civil actions. — Father's petition for legitimation should have been filed as a separate civil action because the language within O.C.G.A. § 19-7-22 suggested that legitimation petitions were separate civil actions; the absence of language explicitly providing for a similar avenue in the adoption context implies that the legislature intended legitimation petitions to be stand-alone actions. *Brewton v. Poss*, 316 Ga. App. 704, 728 S.E.2d 837 (2012).

Termination of parental rights. — Pursuant to O.C.G.A. § 15-11-28(a)(2)(C), the superior court did not have subject matter jurisdiction to terminate the husband's parental rights because the biological father's petition to legitimate a child who was born in wedlock was a petition to

terminate the parental rights of the legal father; after the superior court determined that the biological father had not abandoned his opportunity interest, the issue became whether the superior court could grant the petition to legitimate the child, and to grant the legitimation petition required the superior court to first terminate the parental rights of the husband, who was the legal father. *Brine v. Shipp*, 291 Ga. 376, 729 S.E.2d 393 (2012).

Name change. — Trial court did not abuse the court's discretion in granting a father's name change petition, pursuant to O.C.G.A. § 19-7-22(g)(1), when he filed a legitimation petition because the evidence supported the trial court's ruling that it was in the child's best interest, would strengthen the father and son bond, and the child and mother no longer shared the same surname. *Riggins v. Stirgus*, 319 Ga. App. 790, 738 S.E.2d 635 (2013).

Cited in *Ray v. Hann*, 323 Ga. App. 45, 746 S.E.2d 600 (2013).

19-7-24. Parents' obligations to child born out of wedlock.

JUDICIAL DECISIONS

Health care insurance. — In a mother's paternity suit to establish the legitimation, custody, and support of her minor child by the father, the trial court did not err in failing to require the father to pay

for the child's health insurance under O.C.G.A. § 19-7-24 if not employed by the NFL. *Jackson v. Irvin*, 316 Ga. App. 560, 730 S.E.2d 48 (2012).

ARTICLE 3

DETERMINATION OF PATERNITY

19-7-43. Petition; by whom brought; effect of agreement on right to bring petition; stay pending birth of child; court order for blood tests; genetic tests.

JUDICIAL DECISIONS

Order requiring a parent to submit to genetic testing erroneous and not supported.

Trial court's order requiring that an alleged father and a mother submit to paternity blood testing was erroneous because the doctrine of *res judicata* clearly

proscribed the trial court's reconsideration of the issue of paternity; an unappealed and unmodified final order establishing paternity and child support, which was predicated on the parties' settlement agreement and paternity acknowledgment expressly consented to by

the father, adjudged that he was the father of the mother's child, and while the father moved to set aside the final order, the trial court found that he had failed to meet his burden of disestablishing pater-

nity under O.C.G.A. § 19-7-54 and denied the motion. *Venable v. Parker*, 307 Ga. App. 880, 706 S.E.2d 211 (2011).

Cited in *Brewton v. Poss*, 316 Ga. App. 704, 728 S.E.2d 837 (2012).

19-7-46. Evidence at trial.

Cross references. — Expert opinion testimony in criminal proceedings, § 24-7-707. Medical reports in narrative form, § 24-8-826. Identification of medical

bills, § 24-9-921. When medical information may be released, § 24-12-1. Disclosure of medical records, § 24-12-11 et seq.

19-7-46.1. Name or social security number on birth certificate or other record as evidence of paternity; signed voluntary acknowledgment of paternity.

JUDICIAL DECISIONS

Order requiring a parent to submit to genetic testing.

Trial court's order requiring that an alleged father and a mother submit to paternity blood testing was erroneous because the doctrine of res judicata clearly proscribed the trial court's reconsideration of the issue of paternity; an unappealed and unmodified final order establishing paternity and child support, which was predicated on the parties' settlement agreement and paternity acknowledgment expressly consented to by the father, adjudged that he was the father of the mother's child, and while the father moved to set aside the final order, the trial court found that he had failed to meet his burden of disestablishing pater-

nity under O.C.G.A. § 19-7-54 and denied the motion. *Venable v. Parker*, 307 Ga. App. 880, 706 S.E.2d 211 (2011).

Denial of petition for legitimation improperly set aside. — Trial court erred by setting aside the denial of a biological father's petition for legitimation because the voluntary acknowledgment of paternity preempted the denial as the father failed to make the trial court aware of the acknowledgment and could not subsequently use the document to set aside the trial court's final judgment. *Allifi v. Raider*, 323 Ga. App. 510, 746 S.E.2d 763 (2013).

Cited in *Ray v. Hann*, 323 Ga. App. 45, 746 S.E.2d 600 (2013).

19-7-50. Costs.

JUDICIAL DECISIONS

Trial court did not fail to award adequate fees. — In a mother's paternity suit to establish the legitimation, custody, and support of her minor child by the father, the mother asked for an award of \$20,000 in attorney fees. The trial court recognized that the court had awarded the mother \$5,000 in fees during the pendency of the action; therefore, the court

did not abuse the court's discretion by awarding the mother an additional \$5,000 in fees under the authority of O.C.G.A. § 19-7-50 at the final hearing. *Jackson v. Irvin*, 316 Ga. App. 560, 730 S.E.2d 48 (2012).

Cited in *Avren v. Garten*, 289 Ga. 186, 710 S.E.2d 130 (2011).

RESEARCH REFERENCES

ALR. — Entitlement to attorney’s fees under Uniform Parentage Act of 1973, 72 ALR6th 413.

19-7-51. Order of support, visitation privileges, and other provisions.

JUDICIAL DECISIONS

Cited in Mullin v. Roy, 287 Ga. 810, 700 S.E.2d 370 (2010).

19-7-54. Motion to set aside determination of paternity.

JUDICIAL DECISIONS

Res judicata proscribed reconsideration of paternity. — Trial court’s order requiring that an alleged father and a mother submit to paternity blood testing was erroneous because the doctrine of res judicata clearly proscribed the trial court’s reconsideration of the issue of paternity; an unappealed and unmodified final order establishing paternity and child support, which was predicated on the parties’ settlement agreement and paternity acknowledgment expressly consented to by the father, adjudged that he was the father of the mother’s child, and while the father moved to set aside the final order, the trial court found that he had failed to meet his burden of disestablishing paternity under O.C.G.A. § 19-7-54 and denied the motion. Venable v. Parker, 307 Ga. App. 880, 706 S.E.2d 211 (2011).

CHAPTER 8
ADOPTION

Article 1		Sec.	
General Provisions			
Sec.			
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ARTICLE 1

GENERAL PROVISIONS

19-8-1. Definitions.

For purposes of this chapter, the term:

(1) “Biological father” means the male who impregnated the biological mother resulting in the birth of the child.

(2) “Child” means a person who is under 18 years of age and who is sought to be adopted.

(3) “Child-placing agency” means an agency licensed as a child-placing agency pursuant to Chapter 5 of Title 49.

(4) “Department” means the Department of Human Services.

(4.1) “Evaluator” means the person or agency that conducts a home study. An evaluator shall be a licensed child-placing agency, the department, or a licensed professional with at least two years of adoption related professional experience, including a licensed clinical social worker, licensed master social worker, licensed marriage and family therapist, or licensed professional counselor; provided, however, that where none of the foregoing evaluators are available, the court may appoint a guardian ad litem or court appointed special advocate to conduct the home study.

(5) “Guardian” means a legal guardian of the person of a child.

(5.1) “Home study” means an evaluation by an evaluator of the petitioner’s home environment for the purpose of determining the suitability of the environment as a prospective adoptive home for a child. Such evaluation shall consider the petitioner’s physical health, emotional maturity, financial circumstances, family, and social background and shall conform to the rules and regulations established by the department for child-placing agencies for adoption home studies.

(5.2) “Home study report” means the written report generated as a result of the home study.

(6) “Legal father” means a male who:

(A) Has legally adopted a child;

(B) Was married to the biological mother of that child at the time the child was conceived or was born, unless such paternity was

disproved by a final order pursuant to Article 3 of Chapter 7 of this title;

(C) Married the legal mother of the child after the child was born and recognized the child as his own, unless such paternity was disproved by a final order pursuant to Article 3 of Chapter 7 of this title;

(D) Has legitimated the child by a final order pursuant to Code Section 19-7-22; or

(E) Has legitimated the child pursuant to Code Section 19-7-21.1

and who has not surrendered or had terminated his rights to the child.

(7) “Legal mother” means the female who is the biological or adoptive mother of the child and who has not surrendered or had terminated her rights to the child.

(8) “Parent” means either the legal father or the legal mother of the child.

(9) “Petitioner” means a person who petitions to adopt or terminate rights to a child pursuant to this chapter.

(10) “Putative father registry” means the registry established and maintained pursuant to subsections (d) and (e) of Code Section 19-11-9. (Code 1981, § 19-8-1, enacted by Ga. L. 1990, p. 1572, § 5; Ga. L. 1997, p. 1686, § 4; Ga. L. 2008, p. 667, § 7/SB 88; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2011, p. 573, § 1/SB 172.)

The 2011 amendment, effective July 1, 2011, added paragraphs (4.1), (5.1), and (5.2). See editor’s note for applicability.

Editor’s notes. — Ga. L. 2011, p. 573, § 8, not codified by the General Assembly,

provides that the amendment to this Code section shall apply to all placements of children for adoption and all petitions for adoption filed on or after July 1, 2011.

JUDICIAL DECISIONS

Adoptive parents. — Limiting language of O.C.G.A. § 19-7-3(b), forbidding original actions for grandparent visitation if the parents are together and living with the child, includes adoptive parents because in the absence of language limiting the term “parent” to only “natural parents” or “biological parents,” there is no legislative intent to withhold from adoptive parents the same constitutionally protected status enjoyed by biological parents to raise their children without state

interference; in construing § 19-7-3(b), the definition of parent in the adoption statute, O.C.G.A. § 19-8-1(6) and (8), which gives full legal status to adoptive parents, cannot be ignored, and the clear intent of the adoption statute is to give adoptive parents full legal rights. *Bailey v. Kunz*, 307 Ga. App. 710, 706 S.E.2d 98 (2011), *aff’d*, 290 Ga. 361, 720 S.E.2d 634 (2012).

Cited in *Ray v. Hann*, 323 Ga. App. 45, 746 S.E.2d 600 (2013).

19-8-2. Jurisdiction and venue of adoption proceedings.

JUDICIAL DECISIONS

Jurisdiction properly exercised. — Trial court did not err in exercising jurisdiction in a petition for adoption because the Georgia Uniform Child Custody Juris-

diction Enforcement Act, O.C.G.A. § 19-9-40 et seq., did not govern adoption proceedings. *Barr v. Gregor*, 316 Ga. App. 269, 728 S.E.2d 868 (2012).

19-8-3. Who may adopt a child; when petition must be filed in names of both spouses.

JUDICIAL DECISIONS

No prohibition against denying single individual right to adopt. — Trial court abused the court's discretion by denying a foster parent's petition to adopt the parent's foster child on the ground that placing the child with the foster parent, who was not married to the individual with whom the foster parent lived, violated the state's public policy because all of the evidence showed that the adoption would be in the child's best interest, and the trial court failed to apply the law as written and determine whether it was in the child's best interest to allow the adop-

tion; all of the witnesses, including the guardian ad litem the trial court appointed to represent the child's interests and the Department of Family and Children's Services adoption specialist, testified that the adoption was in the child's best interest and that to remove the child from the only family the child had ever known would be devastating to the child, and O.C.G.A. § 19-8-3 clearly did not prohibit the adoption because the General Assembly did not prohibit unmarried couples from adopting. *In re Goudeau*, 305 Ga. App. 718, 700 S.E.2d 688 (2010).

19-8-4. When surrender or termination of parental or guardian's rights required; consent of child of 14 or older necessary; acknowledgment of surrender; compliance with Interstate Compact on Placement of Children.

Cross references. — Adoption — Expediting uncontested agency adoption hearings, Ga. Unif. Sup. Ct. R. 47.

19-8-5. Surrender or termination of parental or guardian's rights where child to be adopted by third party.

(a) Except as otherwise authorized in this chapter, a child who has any living parent or guardian may be adopted by a third party who is neither the stepparent nor relative of that child, as described in subsection (a) of Code Sections 19-8-6 and 19-8-7, only if each such living parent and each such guardian has voluntarily and in writing surrendered all of his or her rights to such child to that third party for the purpose of enabling that third party to adopt such child. Except as provided in subsection (m) of this Code section, no child shall be placed with a third party for purposes of adoption unless prior to the date of

placement a home study shall have been completed, and the home study report recommends placement of a child in such third party's home.

(b) In the case of a child 14 years of age or older, the written consent of the child to his adoption must be given and acknowledged in the presence of the court.

(c) The surrender specified in paragraphs (1) and (2) of subsection (e) of this Code section shall be executed following the birth of the child, and the pre-birth surrender specified in paragraph (3) of subsection (e) of this Code section shall be executed prior to the birth of the child. Each surrender shall be executed in the presence of a notary. The name and address of each person to whom the child is surrendered may be omitted to protect confidentiality, provided the surrender sets forth the name and address of his agent for purposes of notice of withdrawal as provided for in subsection (d) of this Code section. A copy shall be delivered to the individual signing the surrender at the time of the execution thereof.

(d) A person signing a surrender pursuant to this Code section shall have the right to withdraw the surrender as provided in subsection (b) of Code Section 19-8-9.

(e)(1) The surrender by a parent or guardian specified in subsection (a) of this Code section shall meet the requirements of subsection (c) of Code Section 19-8-26.

(2) The biological father who is not the legal father of a child may surrender all his rights to the child for purposes of an adoption pursuant to this Code section. That surrender shall meet the requirements of subsection (d) of Code Section 19-8-26.

(3)(A) The biological father who is not the legal father of a child may execute a surrender of his rights to the child prior to the birth of the child for the purpose of an adoption pursuant to this Code section. A pre-birth surrender, when signed under oath by the alleged biological father, shall serve to relinquish the alleged biological father's rights to the child and to waive the alleged biological father's right to notice of any proceeding with respect to the child's adoption, custody, or guardianship. The court in any adoption proceeding shall have jurisdiction to enter a final order of adoption of the child based upon the pre-birth surrender and in other proceedings to determine the child's legal custody or guardianship shall have jurisdiction to enter an order for those purposes.

(B) The responsibilities of an alleged biological father are permanently terminated only upon the entry of a final order of adoption. A person executing a pre-birth surrender pursuant to this Code section shall have the right to withdraw the surrender within

ten days from the date of execution thereof, notwithstanding the date of birth of the child.

(C) If a final order of adoption is not entered after the execution of a pre-birth surrender and paternity is established by acknowledgment, by administrative order, or by judicial order, then the alleged biological father shall be responsible for child support or other financial obligations to the child or to the child's mother, or to both.

(D) The pre-birth surrender shall not be valid for use by a legal father as defined under paragraph (6) of Code Section 19-8-1 or for any man who has executed either a voluntary acknowledgment of legitimation pursuant to the provisions of paragraph (2) of subsection (g) of Code Section 19-7-22 or a voluntary acknowledgment of paternity pursuant to the provisions of Code Section 19-7-46.1.

(E) The pre-birth surrender may be executed at any time after the biological mother executes a sworn statement identifying such person as an alleged biological father of the biological mother's unborn child.

(F) The pre-birth surrender shall meet the requirements of subsection (f) of Code Section 19-8-26.

(f) A surrender of rights shall be acknowledged by the person who surrenders those rights by also signing an acknowledgment meeting the requirements of subsection (g) of Code Section 19-8-26.

(g) Whenever the legal mother surrenders her parental rights pursuant to this Code section, she shall execute an affidavit meeting the requirements of subsection (h) of Code Section 19-8-26.

(h) Whenever rights are surrendered pursuant to this Code section, the representative of each petitioner shall execute an affidavit meeting the requirements of subsection (k) of Code Section 19-8-26.

(i) A surrender pursuant to this Code section may be given by any parent or biological father who is not the legal father of the child sought to be adopted irrespective of whether such parent or biological father has arrived at the age of majority. The surrender given by any such minor shall be binding upon him as if the individual were in all respects sui juris.

(j) A copy of each surrender specified in subsection (a) of this Code section, together with a copy of the acknowledgment specified in subsection (f) of this Code section and a copy of the affidavits specified in subsections (g) and (h) of this Code section and the name and address of each person to whom the child is surrendered, shall be mailed, by registered or certified mail or statutory overnight delivery, return receipt requested, to the

Office of Adoptions
Georgia Department of Human Services
Atlanta, Georgia

within 15 days from the execution thereof. Upon receipt of the copy the department may commence its investigation as required in Code Section 19-8-16.

(k) A petition for adoption pursuant to subsection (a) of this Code section shall be filed within 60 days from the date of the surrender. If the petition is not filed within the time period specified by this subsection or if the proceedings resulting from the petition are not concluded with an order granting the petition, the surrender shall operate as follows according to the election made therein by the legal parent or guardian of the child:

(1) In favor of that legal parent or guardian, with the express stipulation that neither this nor any other provision of the surrender shall be deemed to impair the validity, absolute finality, or totality of the surrender under any other circumstance, once the revocation period has elapsed;

(2) In favor of the licensed child-placing agency designated in the surrender of rights, if any; or

(3) If the legal parent or guardian is not designated and no child-placing agency is designated in the surrender of rights, or if the designated child-placing agency declines to accept the child for placement for adoption, in favor of the department for placement for adoption pursuant to subsection (a) of Code Section 19-8-4. The court may waive the 60 day time period for filing the petition for excusable neglect.

(l) In any surrender pursuant to this Code section, the provisions of Chapter 4 of Title 39, relating to the Interstate Compact on the Placement of Children, if applicable, shall be complied with.

(m) If the home study for a third-party adoption has not occurred prior to the date of placement, then the third party shall, at the time of the filing of the petition for adoption, file a motion with the court seeking an order authorizing placement of such child prior to the completion of the home study. Such motion shall identify the evaluator that the petitioner has selected to perform the home study. The court may waive the requirement of a preplacement home study in cases when a child to be adopted already resides in the prospective adoptive home pursuant to a court order of guardianship, testamentary guardianship, or custody.

(n) The court may grant the motion for placement prior to the completion of a home study if the court finds that such placement is in the best interest of the child.

(o) If the court grants the motion for placement prior to the completion of a home study and authorizes placement of a child prior to the completion of the home study, then:

(1) Such child shall be permitted to remain in the home of the third party with whom the parent or guardian placed such child pending further order of the court;

(2) A copy of the order authorizing placement of such child prior to the completion of the home study shall be delivered to the department and the evaluator selected to perform the home study by the clerk of the court within 15 days of the date of the entry of such order; and

(3) The home study, if not already in process, shall be initiated by the evaluator selected by the petitioner or appointed by the court within ten days of such evaluator's receipt of the court's order. (Code 1981, § 19-8-5, enacted by Ga. L. 1990, p. 1572, § 5; Ga. L. 1991, p. 1640, § 1; Ga. L. 1999, p. 252, § 4; Ga. L. 2000, p. 1589, § 3; Ga. L. 2003, p. 503, § 2; Ga. L. 2007, p. 342, §§ 3, 4/HB 497; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2011, p. 573, §§ 2, 3/SB 172.)

The 2011 amendment, effective July 1, 2011, in subsection (a), substituted "his or her rights to such child to that third party for the purpose of enabling that third party to adopt such child" for "his rights to the child to that third person for the purpose of enabling that person to adopt the child" at the end of the first sentence and added the second sentence;

and added subsections (m), (n), and (o). See editor's note for applicability.

Editor's notes. — Ga. L. 2011, p. 573, § 8, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all placements of children for adoption and all petitions for adoption filed on or after July 1, 2011.

19-8-6. Surrender of parental rights where father and mother not still married; surrender of rights where only one parent still living.

JUDICIAL DECISIONS

Findings of fact and conclusions of law are mandatory.

Trial court erred by terminating a biological father's parental rights and ordering step-father adoption because the court failed to set forth specific findings of fact

to support the conclusion that the requisites of O.C.G.A. § 19-8-10(b) as to abandonment of the child had been met. *Ray v. Hann*, 323 Ga. App. 45, 746 S.E.2d 600 (2013).

19-8-10. When surrender or termination of parental rights not required; service on parents in such cases.

(a) Surrender or termination of rights of a parent pursuant to subsection (a) of Code Section 19-8-4, 19-8-5, 19-8-6, or 19-8-7 shall not be required as a prerequisite to the filing of a petition for adoption of a

child of that parent pursuant to Code Section 19-8-13 where the court determines by clear and convincing evidence that the:

- (1) Child has been abandoned by that parent;
- (2) Parent cannot be found after a diligent search has been made;
- (3) Parent is insane or otherwise incapacitated from surrendering such rights; or
- (4) Parent has failed to exercise proper parental care or control due to misconduct or inability, as set out in paragraph (3), (4), or (5) of subsection (a) of Code Section 15-11-310,

and the court is of the opinion that the adoption is in the best interests of that child, after considering the physical, mental, emotional, and moral condition and needs of the child who is the subject of the proceeding, including the need for a secure and stable home.

(b) Surrender of rights of a parent pursuant to subsection (a) of Code Section 19-8-6 or 19-8-7 shall not be required as a prerequisite to the filing of a petition for adoption of a child of that parent pursuant to Code Section 19-8-13, if that parent, for a period of one year or longer immediately prior to the filing of the petition for adoption, without justifiable cause, has significantly failed:

- (1) To communicate or to make a bona fide attempt to communicate with that child in a meaningful, supportive, parental manner; or
- (2) To provide for the care and support of that child as required by law or judicial decree,

and the court is of the opinion that the adoption is for the best interests of that child.

(c) Whenever it is alleged by any petitioner that surrender or termination of rights of a parent is not a prerequisite to the filing of a petition for adoption of a child of that parent in accordance with subsection (a) or (b) of this Code section, that parent shall be personally served with a conformed copy of the adoption petition, together with a copy of the court's order thereon specified in Code Section 19-8-14, or, if personal service cannot be perfected, by registered or certified mail or statutory overnight delivery, return receipt requested, at his last known address. If service cannot be made by either of these methods that parent shall be given notice by publication once a week for three weeks in the official organ of the county where the petition has been filed and of the county of his last known address. A parent who receives notification pursuant to this paragraph may appear in the pending adoption action and show cause why such parent's rights to the child sought to be adopted in that action should not be terminated by that adoption. Notice shall be deemed to have been received the date:

(1) Personal service is perfected;

(2) Of delivery shown on the return receipt of registered or certified mail or statutory overnight delivery; or

(3) Of the last publication. (Code 1981, § 19-8-10, enacted by Ga. L. 1990, p. 1572, § 5; Ga. L. 1991, p. 94, § 19; Ga. L. 1996, p. 474, § 5; Ga. L. 1999, p. 252, § 7; Ga. L. 2000, p. 20, § 11; Ga. L. 2000, p. 1589, § 3; Ga. L. 2013, p. 294, § 4-25/HB 242.)

The 2013 amendment, effective January 1, 2014, substituted “paragraph (3), (4), or (5) of subsection (a) of Code Section 15-11-310” for “paragraph (2), (3), or (4) of subsection (b) of Code Section 15-11-94” in paragraph (a)(4). See editor’s note for applicability.

Editor’s notes. — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: “This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and

after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions.”

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

SIGNIFICANT FAILURE TO COMMUNICATE OR SUPPORT

General Consideration

Findings of fact and conclusions of law. — Since a trial court failed to make any specific findings of fact in support of the court’s recitation under O.C.G.A. § 19-8-10 that a child’s father had failed without justifiable cause to communicate with the child for a period of one year immediately prior to the filing of the adoption petition, the order did not comply with the requirements of O.C.G.A. § 19-8-18, and the court had to remand the matter to the trial court to make the appropriate findings of fact and conclusions of law. *Sauls v. Atchison*, 316 Ga. App. 792, 730 S.E.2d 459 (2012).

Trial court erred by terminating a biological father’s parental rights and ordering adoption because the court failed to set forth specific findings of fact to support the conclusion that the requisites of O.C.G.A. § 19-8-10(b) as to abandonment of the child had been met. *Ray v. Hann*, 323 Ga. App. 45, 746 S.E.2d 600 (2013).

Impact of failing to include findings of fact and conclusions of law.

— Mother was entitled to order vacating the grant of the stepmother’s petition for adoption because the final order did not include findings of fact and conclusions of law as required to support the termination of parental rights. *Dell v. Dell*, 324 Ga. App. 297, 748 S.E.2d 703 (2013).

Superior court’s order was deficient because the order did not address any of the criteria for termination of parental rights pursuant to OCGA § 15-11-94, it did not include specific findings of fact showing that the mother abandoned the child, and the order did not include specific factual findings showing that the mother failed to provide care and support for the child without justifiable cause. Moreover, the superior court’s conclusion that adoption was in the child’s best interest also lacked particularity and, therefore, the mother was entitled to an order vacating the grant of the stepmother’s petition for adoption. *Dell v. Dell*, 324 Ga. App. 297,

General Consideration (Cont'd)

748 S.E.2d 703 (2013).

Due process rights of father denied.

— Trial court erred in granting the stepfather's petition for stepparent adoption under O.C.G.A. § 19-8-10(b) because the father's due process rights were violated when, during the presentation of the stepfather's evidence, the trial court sua sponte ended the matter and refused to allow the father to present witnesses and other evidence to show cause why the father's parental rights should not be terminated. *Hafer v. Lowry*, 320 Ga. App. 76, 739 S.E.2d 84 (2013).

Adoption petition failed to address statutory factors. — In a stepfather's appeal, a trial court erred by denying the stepfather's petition for adoption because the adoption petition did not address the issue of whether the biological father was a parent of the child for purposes of the adoption statutes, O.C.G.A. §§ 19-7-21.1(a)(2)(F) and 19-8-1(6). *Allifi v. Raider*, 323 Ga. App. 510, 746 S.E.2d 763 (2013).

Order deficient. — Superior court's order in termination of parental rights action was deficient because it did not include specific findings of fact showing that the mother abandoned the child, and

it did not include specific factual findings showing that the mother failed to provide care and support for the child without justifiable cause. Moreover, the superior court's conclusion that adoption was in the child's best interest also lacked particularity. *Dell v. Dell*, 324 Ga. App. 297, 748 S.E.2d 703 (2013).

Significant Failure to Communicate or Support**Evidence insufficient to show failure to communicate or support.**

— Trial court erred in granting a stepfather's adoption petition and in terminating a natural father's parental rights because there was not clear and convincing evidence that the father's failure to communicate with and care for the child was without justifiable cause under O.C.G.A. § 19-8-10(b), and the stepfather failed to present any evidence of the father's financial condition during the year prior to the filing of the petition; the mother confirmed that she refused to let the father visit the child, and the stepfather failed to present any evidence contradicting the father's evidence that the father was unable to earn sufficient income because of his back injuries. *Weber v. Livingston*, 309 Ga. App. 665, 710 S.E.2d 864 (2011).

19-8-11. Petitioning superior court to terminate parental rights; service of process.

(a)(1) In those cases where the department or a child-placing agency has either obtained:

(A) The voluntary written surrender of all parental rights from one of the parents or the guardian of a child; or

(B) An order of a court of competent jurisdiction terminating all of the rights of one of the parents or the guardian of a child,

the department or child-placing agency may in contemplation of the placement of such child for adoption petition the superior court of the county where the child resides to terminate the parental rights of the remaining parent pursuant to this Code section.

(2) In those cases where a person who is the resident of another state has obtained the voluntary written surrender of all parental rights from one of the parents or the guardian of a child, each such person to whom the child has been surrendered may in contemplation

of the adoption of such child in such other state petition the superior court of the county where the child resides to terminate the parental rights of the remaining parent pursuant to this Code section.

(3) Parental rights may be terminated pursuant to paragraph (1) or (2) of this subsection where the court determines by clear and convincing evidence that the:

(A) Child has been abandoned by that parent;

(B) Parent of the child cannot be found after a diligent search has been made;

(C) Parent is insane or otherwise incapacitated from surrendering such rights; or

(D) Parent has failed to exercise proper parental care or control due to misconduct or inability, as set out in paragraph (3), (4), or (5) of subsection (a) of Code Section 15-11-310,

and the court shall set the matter down to be heard in chambers not less than 30 and not more than 60 days following the receipt by such remaining parent of the notice under subsection (b) of this Code section and shall enter an order terminating such parental rights if it so finds and if it is of the opinion that adoption is in the best interests of the child, after considering the physical, mental, emotional, and moral condition and needs of the child who is the subject of the proceeding, including the need for a secure and stable home.

(b) Whenever a petition is filed pursuant to subsection (a) of this Code section, the parent whose rights the petitioner is seeking to terminate shall be personally served with a conformed copy of the petition, and a copy of the court's order setting forth the date upon which the petition shall be considered or, if personal service cannot be perfected, by registered or certified mail or statutory overnight delivery, return receipt requested, at his last known address. If service cannot be made by either of these methods, that parent shall be given notice by publication once a week for three weeks in the official organ of the county where the petition has been filed and of the county of his last known address. A parent who receives notification pursuant to this subsection may appear and show cause why such parent's rights to the child sought to be placed for adoption should not be terminated. Notice shall be deemed to have been received the date:

(1) Personal service is perfected;

(2) Of delivery shown on the return receipt of registered or certified mail or statutory overnight delivery; or

(3) Of the last publication. (Code 1981, § 19-8-11, enacted by Ga. L. 1990, p. 1572, § 5; Ga. L. 1996, p. 474, § 6; Ga. L. 1999, p. 252, § 8;

Ga. L. 2000, p. 20, § 12; Ga. L. 2000, p. 1589, § 3; Ga. L. 2013, p. 294, § 4-26/HB 242.)

The 2013 amendment, effective January 1, 2014, substituted “paragraph (3), (4), or (5) of subsection (a) of Code Section 15-11-310” for “paragraph (2), (3), or (4) of subsection (b) of Code Section 15-11-94” in subparagraph (a)(3)(D). See editor’s note for applicability.

Editor’s notes. — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: “This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and

after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions.”

19-8-12. Notice to biological father; procedure when identity or location of father not known; petition, hearing, and order; when rights of biological father terminated; legitimation of child by father; rights of mother.

JUDICIAL DECISIONS

Petitions for legitimation separate civil actions. — Father’s petition for legitimation should have been filed as a separate civil action because the language within O.C.G.A. § 19-7-22 suggested that legitimation petitions were separate civil actions; the absence of language explicitly providing for a similar avenue in the adoption context implies that the legislature intended legitimation petitions to be stand-alone actions. *Brewton v. Poss*, 316 Ga. App. 704, 728 S.E.2d 837 (2012).

Adoption petition failed to address statutory factors. — In a step-father’s

appeal, a trial court erred by denying the step-father’s petition for adoption because the adoption petition did not address the issue of whether the biological father was a parent of the child for purposes of the adoption statutes, O.C.G.A. §§ 19-7-21.1(a)(2)(F) and 19-8-1(6). *Allif v. Raider*, 323 Ga. App. 510, 746 S.E.2d 763 (2013).

Cited in *In the Interest of V.B.L.*, 306 Ga. App. 709, 703 S.E.2d 127 (2010).

19-8-13. Petition; filing and contents; financial disclosures; attorney’s affidavit.

(a) The petition for adoption, duly verified, together with one conformed copy thereof, must be filed with the clerk of the superior court having jurisdiction and shall conform to the following guidelines:

(1) The petition shall set forth:

(A) The name, age, marital status, and place of residence of each petitioner;

(B) The name by which the child is to be known should the adoption ultimately be completed;

(C) The date of birth and the sex of the child;

(D) The date and circumstances of the placement of the child with each petitioner;

(E) Whether the child is possessed of any property and, if so, a full and complete description thereof;

(F) Whether the child has one or both parents or his biological father who is not the legal father living; and

(G) Whether the child has a guardian.

(2) Where the adoption is pursuant to subsection (a) of Code Section 19-8-4 the following shall be provided or attached or its absence explained when the petition is filed:

(A) An affidavit from the department or a child-placing agency stating that all of the requirements of Code Sections 19-8-4 and 19-8-12 have been complied with;

(B) The written consent of the department or agency to the adoption;

(C) A copy of the appropriate form verifying the allegation of compliance with the requirements of Chapter 4 of Title 39, relating to the Interstate Compact on the Placement of Children; and

(D) A completed form containing background information regarding the child to be adopted, as required by the adoption unit of the department.

(3) Where the adoption is pursuant to subsection (a) of Code Section 19-8-5, the following shall be provided or attached or its absence explained when the petition is filed:

(A) The written voluntary surrender of each parent or guardian specified in subsection (e) of Code Section 19-8-5;

(B) The written acknowledgment of surrender specified in subsection (f) of Code Section 19-8-5;

(C) The affidavits specified in subsections (g) and (h) of Code Section 19-8-5;

(D) Allegations of compliance with Code Section 19-8-12;

(E) Allegations of compliance with Chapter 4 of Title 39, relating to the Interstate Compact on the Placement of Children;

(F) The accounting required by subsection (c) of this Code section;

(G) Copies of appropriate certificates or forms verifying allegations contained in the petition as to guardianship or custody of the child, the marriage of each petitioner, the divorce or death of each

parent of the child, and compliance with Chapter 4 of Title 39, relating to the Interstate Compact on the Placement of Children;

(H) A completed form containing background information regarding the child to be adopted, as required by the adoption unit of the department; and

(I) A copy of the home study report.

(4) Where the adoption is pursuant to subsection (a) of Code Section 19-8-6, the following shall be provided or attached or its absence explained when the petition is filed:

(A) The written voluntary surrender of the parent or guardian specified in subsection (e) of Code Section 19-8-6;

(B) The written acknowledgment of surrender specified in subsection (f) of Code Section 19-8-6;

(C) The affidavits specified in subsections (g) and (h) of Code Section 19-8-6;

(D) The consent specified in subsection (j) of Code Section 19-8-6;

(E) Allegations of compliance with Code Section 19-8-12;

(F) Copies of appropriate certificates verifying allegations contained in the petition as to guardianship of the child sought to be adopted, the birth of the child sought to be adopted, the marriage of each petitioner, and the divorce or death of each parent of the child sought to be adopted; and

(G) A completed form containing background information regarding the child to be adopted, as required by the adoption unit of the department.

(5) Where the adoption is pursuant to subsection (a) of Code Section 19-8-7, the following shall be provided or attached or its absence explained when the petition is filed:

(A) The written voluntary surrender of each parent specified in subsection (e) of Code Section 19-8-7;

(B) The written acknowledgment of surrender specified in subsection (f) of Code Section 19-8-7;

(C) The affidavits specified in subsections (g) and (h) of Code Section 19-8-7;

(D) Allegations of compliance with Code Section 19-8-12;

(E) Copies of appropriate certificates or forms verifying allegations contained in the petition as to guardianship of the child sought to be adopted, the birth of the child sought to be adopted,

the marriage of each petitioner, and the divorce or death of each parent of the child sought to be adopted; and

(F) A completed form containing background information regarding the child to be adopted, as required by the adoption unit of the department.

(6)(A) Where the adoption is pursuant to Code Section 19-8-8, the following shall be provided or attached or its absence explained when the petition is filed:

(i) A certified copy of the final decree of adoption from the foreign country along with a verified English translation. The translator shall provide a statement regarding his qualification to render the translation, his complete name, and his current address. Should the current address be a temporary one, his permanent address shall also be provided;

(ii) A verified copy of the visa granting the child entry to the United States;

(iii) A certified copy along with a verified translation of the child's amended birth certificate or registration showing each petitioner as parent; and

(iv) A copy of the home study which was completed for United States Immigration and Naturalization Service.

(B) It is not necessary to file copies of surrenders or termination on any parent or biological father who is not the legal father when the petition is filed pursuant to paragraph (1) of Code Section 19-8-8.

(7) Where Code Section 19-8-10 is applicable, parental rights need not be surrendered or terminated prior to the filing of the petition; but any petitioner shall allege facts demonstrating the applicability of Code Section 19-8-10 and shall allege compliance with subsection (c) of Code Section 19-8-10.

(8) If the petition is filed in a county other than that of the petitioners' residence, the reason therefor must also be set forth in the petition.

(b) At the time of filing the petition, the petitioner shall deposit with the clerk the deposit required by Code Section 9-15-4; the fees shall be those established by Code Sections 15-6-77 and 15-6-77.1.

(c) Each petitioner in any proceeding for the adoption of a minor pursuant to the provisions of Code Section 19-8-5 shall file with the petition, in a manner acceptable to the court, a report fully accounting for all disbursements of anything of value made or agreed to be made,

directly or indirectly, by, on behalf of, or for the benefit of the petitioner in connection with the adoption, including, but not limited to, any expenses incurred in connection with:

(1) The birth of the minor;

(2) Placement of the minor with the petitioner;

(3) Medical or hospital care received by the mother or by the minor during the mother's prenatal care and confinement; and

(4) Services relating to the adoption or to the placement of the minor for adoption which were received by or on behalf of the petitioner, either natural parent of the minor, or any other person.

(d) Every attorney for a petitioner in any proceeding for the adoption of a minor pursuant to the provisions of Code Section 19-8-5 shall file, in a manner acceptable to the court, before the decree of adoption is entered, an affidavit detailing all sums paid or promised to that attorney, directly or indirectly, from whatever source, for all services of any nature rendered or to be rendered in connection with the adoption; provided, however, that if the attorney received or is to receive less than \$500.00, the affidavit need only state that fact.

(e) Any report made under this Code section must be signed and verified by the individual making the report.

(f) Whenever a petitioner is a blood relative of the child to be adopted and a grandparent other than the petitioner has visitation rights to the child granted pursuant to Code Section 19-7-3, the petitioner shall cause a copy of the petition for adoption to be served upon the grandparent with the visitation rights or upon such person's counsel of record.

(g) Notwithstanding the provisions of Code Sections 19-8-5 and 19-8-7 and this Code section which require obtaining and attaching a written voluntary surrender and acknowledgment thereof and affidavits of the legal mother and a representative of the petitioner, when the adoption is sought under subsection (a) of Code Section 19-8-5 or 19-8-7 following the termination of parental rights and the placement of the child by the juvenile court pursuant to Code Section 15-11-321, obtaining and attaching to the petition a certified copy of the order terminating parental rights of the parent shall take the place of obtaining and attaching those otherwise required surrenders, acknowledgments, and affidavits.

(h) A petition for adoption regarding a child or children who have a living biological father who is not the legal father and who has not surrendered his rights to the child or children shall include a certificate from the putative father registry disclosing the name, address, and

social security number of any registrant acknowledging paternity of the child or children pursuant to subparagraph (d)(2)(A) of Code Section 19-11-9 or indicating the possibility of paternity of a child of the child's mother pursuant to subparagraph (d)(2)(B) of Code Section 19-11-9 for a period beginning no later than two years immediately prior to the child's date of birth. Such certificate shall indicate a search of the registry on or after the earliest of the following:

- (1) The date of the mother's surrender of parental rights;
- (2) The date of entry of the court order terminating the mother's parental rights;
- (3) The date of the mother's consent to adoption pursuant to Code Section 19-8-6; or
- (4) The date of the filing of the petition for adoption, in which case the certificate may be filed as an amendment to the petition for adoption.

Such certificate shall include a statement that the registry is current as of the earliest date listed in paragraphs (1) through (4) of this subsection, or as of a specified date that is later than the earliest such date. (Code 1981, § 19-8-13, enacted by Ga. L. 1990, p. 1572, § 5; Ga. L. 1991, p. 1640, §§ 4, 5; Ga. L. 1992, p. 6, § 19; Ga. L. 1997, p. 1686, § 6; Ga. L. 2000, p. 20, § 13; Ga. L. 2011, p. 573, § 4/SB 172; Ga. L. 2013, p. 294, § 4-27/HB 242.)

The 2011 amendment, effective July 1, 2011, in subparagraph (a)(3)(F), deleted "the provisions of" preceding "subsection (c)"; in subparagraph (a)(3)(G), inserted "or custody", deleted "sought to be adopted" following "of the child" twice, and deleted "and" from the end; in subparagraph (a)(3)(H), substituted "; and" for a period at the end; and added subparagraph (a)(3)(I). See editor's notes for applicability.

The 2013 amendment, effective January 1, 2014, in subsection (g), substituted "when the adoption" for "where the adoption" near the middle, and substituted "Code Section 15-11-321" for "paragraph (1) of subsection (a) of Code Section 15-11-103" near the end. See editor's notes for applicability.

Editor's notes. — Ga. L. 2011, p. 573, § 8, not codified by the General Assembly,

provides that the amendment to this Code section shall apply to all placements of children for adoption and all petitions for adoption filed on or after July 1, 2011.

Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: "This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions."

19-8-14. Timing of adoption hearing; required records; filing.

(a) It is the policy of this state that, in the best interest of the child, uncontested adoption petitions should be heard as soon as possible but not later than 120 days after the date of filing, unless the petitioner has failed to arrange for the court to receive the report required by the provisions of Code Section 19-8-16 or has otherwise failed to provide the court with all exhibits, surrenders, or certificates required by this chapter within that time period. It is the policy of this state that, in contested adoption petitions, the parties shall make every effort to have the petition considered by the court as soon as practical after the date of filing taking into account the circumstances of the petition and the best interest of the child.

(b) Upon the filing of the petition for adoption, accompanied by the filing fee unless such fee is waived, it shall be the responsibility of the clerk to accept the petition as filed.

(c) Upon the filing of the petition for adoption the court shall fix a date upon which the petition shall be considered, which date shall be not less than 45 days from the date of the filing of the petition.

(d) Notwithstanding the provisions of subsections (a) and (c) of this Code section, it shall be the petitioner's responsibility to request that the court hear the petition on a date that allows sufficient time for fulfillment of notice requirements of Code Section 19-8-10 and Code Section 19-8-12, where applicable.

(e) In the best interest of the child the court may hear the petition less than 45 days from the date of filing upon a showing by the petitioner that either no further notice is required or that any statutory requirement of notice to any person will be fulfilled at an earlier date, and provided that any report required by Code Section 19-8-16 has been completed or will be completed at an earlier date.

(f) The court in the child's best interest may grant such expedited hearings or continuances as may be necessary for completion of applicable notice requirements, investigations, a home study, and reports or for other good cause shown.

(g) Copies of the petition and all documents filed in connection therewith, including, but not limited to, the order fixing the date upon which the petition shall be considered, and all exhibits, surrenders, or certificates required by this chapter, shall be forwarded by the clerk to the department within 15 days after the date of the filing of the petition for adoption.

(h) Copies of the petition, the order fixing the date upon which the petition shall be considered, and all exhibits, surrenders, or certificates

required by this chapter shall be forwarded by the clerk to the child-placing agency or other agent appointed by the court pursuant to the provisions of Code Section 19-8-16 within 15 days after the filing of the petition for adoption, together with a request that a report and investigation be made as required by law.

(i) Copies of all motions, amendments, and other pleadings filed and of all orders entered in connection with the petition for adoption shall be forwarded by the clerk to the department within 15 days after such filing or entry. (Code 1981, § 19-8-14, enacted by Ga. L. 1990, p. 1572, § 5; Ga. L. 1991, p. 1640, § 6; Ga. L. 2003, p. 503, § 4; Ga. L. 2011, p. 573, § 5/SB 172.)

The 2011 amendment, effective July 1, 2011, inserted “, a home study” near the end of subsection (f); and, in subsection (g), inserted “and all documents filed in connection therewith, including, but not limited to”, inserted a comma near the middle, and inserted “the date of” near the end. See editor’s note for applicability.

Cross references. — Adoption — Ex-

pediting uncontested agency adoption hearings, Ga. Unif. Sup. Ct. R. 47.

Editor’s notes. — Ga. L. 2011, p. 573, § 8, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all placements of children for adoption and all petitions for adoption filed on or after July 1, 2011.

19-8-18. Hearing and decree of adoption; district attorney to be directed to review inducement of violations; disposition of child on denial of petition.

JUDICIAL DECISIONS

Petition for adoption properly granted. — Trial court did not abuse the court’s discretion in granting the petition for adoption filed by a child’s paternal grandmother and paternal step grandfather because the court properly found that the adoption was in the best interest of the child; the trial court recognized the importance of continuity, stability, and security that would come from allowing the paternal grandmother and paternal step grandfather to adopt the child and found that they applied themselves so as to promote or foster a positive relationship with all the child’s blood relatives. *Barr v. Gregor*, 316 Ga. App. 269, 728 S.E.2d 868 (2012).

Res judicata. — Superior court erred in granting a mother’s motion to dismiss a former partner’s petition to adopt the mother’s child because a judgment denying the mother’s motion to set aside the adoption decree was *res judicata* as to the validity of the adoption decree, and the

superior court that dismissed the partner’s petition for custody was not entitled to revisit the validity of the decree; although a superior court ultimately denied the mother’s motion to set aside as untimely, the application of the time bar set out in O.C.G.A. § 19-8-18(e) presupposed that the adoption was one authorized by, and entered in accordance with, O.C.G.A. § 19-8-18(b). *Bates v. Bates*, 317 Ga. App. 339, 730 S.E.2d 482 (2012).

Unmarried individuals may adopt. — Trial court abused the court’s discretion by denying a foster parent’s petition to adopt the foster child on the ground that placing the child with the foster parent, who was not married to the individual with whom the foster parent lived, violated the state’s public policy because all of the evidence showed that the adoption would be in the child’s best interest, and the trial court failed to apply the law as written and determine whether it was in the child’s best interest to allow the adop-

tion; all of the witnesses, including the guardian ad litem the trial court appointed to represent the child's interests and the Department of Family and Children's Services adoption specialist, testified that the adoption was in the child's best interest and that to remove the child from the only family the child had ever known would be devastating to the child, and O.C.G.A. § 19-8-3 clearly did not prohibit the adoption because the General Assembly did not prohibit unmarried couples from adopting. *In re Goudeau*, 305 Ga. App. 718, 700 S.E.2d 688 (2010).

Challenge to consent order time barred. — Challenge by the adoptive father and the biological mother to a consent order providing, inter alia, visitation to the biological father and the paternal grandmother, filed more than a year after the consent was order entered was time barred. *Rimmer v. Tinch*, 324 Ga. App. 65, 749 S.E.2d 236 (2013).

Challenge to adoption decree untimely. — Because any challenge to the adoption decree had to be brought within six months and the mother brought a challenge approximately 10 months after the decree was entered, the trial court erred in granting the mother's motion to set aside the adoption. *Oni v. Oni*, 323 Ga. App. 467, 746 S.E.2d 641 (2013).

Findings of fact and conclusions of law. — Since a trial court failed to make any specific findings of fact in support of the court's recitation under O.C.G.A. § 19-8-10 that a child's father had failed without justifiable cause to communicate with the child for a period of one year immediately prior to the filing of the adoption petition, the order did not comply with the requirements of O.C.G.A. § 19-8-18, and the court had to remand the matter to the trial court to make the appropriate findings of fact and conclusions of law. *Sauls v. Atchison*, 316 Ga. App. 792, 730 S.E.2d 459 (2012).

19-8-19. Effect of decree of adoption.

Law reviews. — For annual survey on domestic relations law, see 64 Mercer L. Rev. 121 (2012).

Trial court erred by terminating a biological father's parental rights and ordering adoption because the court failed to set forth specific findings of fact to support the conclusion that the requisites of O.C.G.A. § 19-8-10(b) as to abandonment of the child had been met. *Ray v. Hann*, 323 Ga. App. 45, 746 S.E.2d 600 (2013).

Construction with other law.

Limiting language of O.C.G.A. § 19-7-3(b), forbidding original actions for grandparent visitation if the parents are together and living with the child, includes adoptive parents because in the absence of language limiting the term "parent" to only "natural parents" or "biological parents," there is no legislative intent to withhold from adoptive parents the same constitutionally protected status enjoyed by biological parents to raise their children without state interference; in construing § 19-7-3(b), the definition of parent in the adoption statute, O.C.G.A. § 19-8-1(6) and (8), which gives full legal status to adoptive parents, cannot be ignored, and the clear intent of the adoption statute is to give adoptive parents full legal rights. *Bailey v. Kunz*, 307 Ga. App. 710, 706 S.E.2d 98 (2011), *aff'd*, 290 Ga. 361, 720 S.E.2d 634 (2012).

Public policy of the state is to consider best interest of the child. — Public policy of the state as enunciated by the General Assembly is to consider the best interest of the child when determining whether he or she should be adopted, O.C.G.A. § 19-8-18(b); in stating that marriage is encouraged, O.C.G.A. § 19-3-6 forbids most efforts to restrain or discourage marriage by contract, condition, limitation, or otherwise, and § 19-3-6 has nothing to do with the standards the courts must apply in determining whether to allow a child to be adopted. *In re Goudeau*, 305 Ga. App. 718, 700 S.E.2d 688 (2010).

JUDICIAL DECISIONS

Res judicata. — Superior court erred in granting a mother's motion to dismiss a former partner's petition to adopt the mother's child because a judgment denying the mother's motion to set aside the adoption decree was *res judicata* as to the validity of the adoption decree; the superior court was competent to entertain the motion to set aside and to consider whether the court properly had jurisdiction when the court entered the adoption decree, and the court's denial of the motion to set aside was conclusive of the question of standing in the partner's case. *Bates v. Bates*, 317 Ga. App. 339, 730 S.E.2d 482 (2012).

Adopting parent on equal footing as biological. — Trial court did not err in awarding primary physical custody of the couple's biological child to the wife as the court's determination that splitting the siblings would cause emotional harm to both children was sufficient to overcome the statutory presumption in favor of the husband with respect to custody of the older child, who was the biological child of the husband and adopted by the wife. *Hastings v. Hastings*, 291 Ga. 782, 732 S.E.2d 272 (2012).

Grandparents' visitation precluded after child adopted by stepfather.

Limiting language of O.C.G.A. § 19-7-3(b), forbidding original actions for grandparent visitation if the parents are together and living with the child, includes adoptive parents because in the absence of language limiting the term "parent" to only "natural parents" or "biological parents", there is no legislative

intent to withhold from adoptive parents the same constitutionally protected status enjoyed by biological parents to raise their children without state interference; in construing § 19-7-3(b), the definition of parent in the adoption statute, O.C.G.A. § 19-8-1(6) and (8), which gives full legal status to adoptive parents, cannot be ignored, and the clear intent of the adoption statute is to give adoptive parents full legal rights. *Bailey v. Kunz*, 307 Ga. App. 710, 706 S.E.2d 98 (2011), *aff'd*, 290 Ga. 361, 720 S.E.2d 634 (2012).

Grandparents' visitation rights precluded when child adopted by stepfather. — Term "parents" in O.C.G.A. § 19-7-3(b) did not exclude a child's adoptive parent; therefore, because a child was living with the child's mother and adoptive father, who were not separated, the child's natural grandparents had no right to file an original action for visitation with the child under the statute. Upon their son's termination of his parental rights to the child, the grandparents became strangers to the child, pursuant to O.C.G.A. § 19-8-19. *Kunz v. Bailey*, 290 Ga. 361, 720 S.E.2d 634 (2012).

Incest not applicable between adopted siblings. — Trial court erred when the court denied the defendant's motion to quash the count of an indictment charging the defendant with incest because the defendant did not commit incest since the defendant's adoptive sister was not a whole blood or half blood sibling; the incest statute does not prohibit sexual intercourse between a brother and an adoptive sister not related by blood. *Smith v. State*, 311 Ga. App. 757, 717 S.E.2d 280 (2011).

19-8-23. Where records of adoption kept; examination by parties and attorneys; use of information by agency and department.

(a) The original petition, all amendments and exhibits thereto, all motions, documents, affidavits, records, and testimony filed in connection therewith, and all decrees or orders of any kind whatsoever, except the original investigation report and background information referred to in Code Section 19-8-20, shall be recorded in a book kept for that purpose and properly indexed; and the book shall be part of the records of the court in each county which has jurisdiction over matters of

adoption in that county. All of the records, including the docket book, of the court granting the adoption, of the department, and of the child-placing agency that relate in any manner to the adoption shall be kept sealed and locked. The records may be examined by the parties at interest in the adoption and their attorneys when, after written petition has been presented to the court having jurisdiction and after the department and the appropriate child-placing agency have received at least 30 days' prior written notice of the filing of such petition, the matter has come on before the court in chambers and, good cause having been shown to the court, the court has entered an order permitting such examination. Notwithstanding the foregoing, if the adoptee who is the subject of the records sought to be examined is less than 18 years of age at the time the petition is filed and the petitioner is someone other than one of the adoptive parents of the adoptee, then the department shall provide written notice of such proceedings to the adoptive parents by certified mail or statutory overnight delivery, return receipt requested, at the last address the department has for such adoptive parents and the court shall continue any hearing on the petition until not less than 60 days after the date the notice was sent. Each such adoptive parent shall have the right to appear in person or through counsel and show cause why such records should not be examined. Adoptive parents may provide the department with their current address for purposes of receiving notice under this subsection by mailing that address to:

Office of Adoptions
Department of Human Services
Atlanta, Georgia

(b) The department or the child-placing agency may, in its sole discretion, make use of any information contained in the records of the respective department or agency relating to the adoptive parents in connection with a subsequent adoption matter involving the same adoptive parents or to provide notice when required by subsection (a) of this Code section.

(c) The department or the child-placing agency may, in its sole discretion, make use of any information contained in its records on a child when an adoption disrupts after finalization and when such records are required for the permanent placement of such child, or when the information is required by federal law.

(d)(1) Upon the request of a party at interest in the adoption, a child, legal guardian, or health care agent of an adopted person or a provider of medical services to such a party, child, legal guardian, or health care agent when certain information would assist in the provision of medical care, a medical emergency, or medical diagnosis or treatment, the department or child-placing agency shall access its

own records on finalized adoptions for the purpose of adding subsequently obtained medical information or releasing nonidentifying medical and health history information contained in its records pertaining to an adopted person or the biological parents or relatives of the biological parents of the adopted person. For purposes of this paragraph, the term “health care agent” has the meaning provided by Code Section 31-32-2.

(2) Upon receipt by the State Adoption Unit of the Division of Family and Children Services of the department or by a child-placing agency of documented medical information relevant to an adoptee, the office or child-placing agency shall use reasonable efforts to contact the adoptive parents of the adoptee if the adoptee is under 18 years of age or the adoptee if he or she is 18 years of age or older and provide such documented medical information to the adoptive parents or the adoptee. The office or child-placing agency shall be entitled to reimbursement of reasonable costs for postage and photocopying incurred in the delivery of such documented medical information to the adoptive parents or adoptee.

(e) Records relating in any manner to adoption shall not be open to the general public for inspection.

(f)(1) Notwithstanding Code Section 19-8-1, for purposes of this subsection, the term:

(A) “Biological parent” means the biological mother or biological father who surrendered that person’s rights or had such rights terminated by court order giving rise to the adoption of the child.

(B) “Commissioner” means the commissioner of human services or that person’s designee.

(C) “Department” means the Department of Human Services or, when the Department of Human Services so designates, the county department of family and children services which placed for adoption the person seeking, or on whose behalf is sought, information under this subsection.

(D) “Placement agency” means the child-placing agency, as defined in paragraph (3) of Code Section 19-8-1, which placed for adoption the person seeking or on whose behalf is sought information under this subsection.

(2) The department or a placement agency, upon the written request of an adopted person who has reached 18 years of age or upon the written request of an adoptive parent on behalf of that parent’s adopted child, shall release to such adopted person or to the adoptive parent on the child’s behalf nonidentifying information regarding such adopted person’s biological parents and information regarding

such adopted person's birth. Such information may include the date and place of birth of the adopted person and the genetic, social, and health history of the biological parents. No information released pursuant to this paragraph shall include the name or address of either biological parent or the name or address of any relative by birth or marriage of either biological parent.

(3)(A) The department or a placement agency upon written request of an adopted person who has reached 21 years of age shall release to such adopted person the name of such person's biological parent if:

(i) The biological parent whose name is to be released has submitted unrevoked written permission to the department or the placement agency for the release of that parent's name to the adopted person;

(ii) The identity of the biological parent submitting permission for the release of that parent's name has been verified by the department or the placement agency; and

(iii) The department or the placement agency has records pertaining to the finalized adoption and to the identity of the biological parent whose name is to be released.

(B) If the adopted person is deceased and leaves a child, such child, upon reaching 21 years of age, may seek the name and other identifying information concerning his or her grandparents in the same manner as the deceased adopted person and subject to the same procedures contained in this Code section.

(4)(A) If a biological parent has not filed written unrevoked permission for the release of that parent's name to the adopted child, the department or the placement agency, within six months of receipt of the written request of the adopted person who has reached 21 years of age, shall make diligent effort to notify each biological parent identified in the original adoption proceedings or in other records of the department or the placement agency relative to the adopted person. For purposes of this subparagraph, "notify" means a personal and confidential contact with each biological parent of the adopted person. The contact shall be by an employee or agent of the placement agency which processed the pertinent adoption or by other agents or employees of the department. The contact shall be evidenced by the person who notified each parent certifying to the department that each parent was given the following information:

(i) The nature of the information requested by the adopted person;

(ii) The date of the request of the adopted person;

(iii) The right of each biological parent to file an affidavit with the placement agency or the department stating that such parent's identity should not be disclosed;

(iv) The right of each biological parent to file a consent to disclosure with the placement agency or the department; and

(v) The effect of a failure of each biological parent to file either a consent to disclosure or an affidavit stating that the information in the sealed adoption file should not be disclosed.

(B) If a biological parent files an unrevoked consent to the disclosure of that parent's identity, such parent's name shall be released to the adopted person who has requested such information as authorized by this paragraph.

(C) If, within 60 days of being notified by the department or the placement agency pursuant to subparagraph (A) of this paragraph, a biological parent has filed with the department or placement agency an affidavit objecting to such release, information regarding that biological parent shall not be released.

(D)(i) If six months after receipt of the adopted person's written request the placement agency or the department has either been unable to notify a biological parent identified in the original adoption record or has been able to notify a biological parent identified in the original adoption record but has not obtained a consent to disclosure from the notified biological parent, then the identity of a biological parent may only be disclosed as provided in division (ii) or (iii) of this subparagraph.

(ii) The adopted person who has reached 21 years of age may petition the Superior Court of Fulton County to seek the release of the identity of each of that person's biological parents from the department or placement agency. The court shall grant the petition if the court finds that the department or placement agency has made diligent efforts to locate each biological parent pursuant to this subparagraph either without success or upon locating a biological parent has not obtained a consent to disclosure from the notified biological parent and that failure to release the identity of each biological parent would have an adverse impact upon the physical, mental, or emotional health of the adopted person.

(iii) If it is verified that a biological parent of the adopted person is deceased, the department or placement agency shall be authorized to disclose the name and place of burial of the deceased biological parent, if known, to the adopted person

seeking such information without the necessity of obtaining a court order.

(5)(A) Upon written request of an adopted person who has reached 21 years of age or a person who has reached 21 years of age and who is the sibling of an adopted person, the department or a placement agency shall attempt to identify and notify the siblings of the requesting party, if such siblings are at least 18 years of age. Upon locating the requesting party's sibling, the department or the placement agency shall notify the sibling of the inquiry. Upon the written consent of a sibling so notified, the department or the placement agency shall forward the requesting party's name and address to the sibling and, upon further written consent of the sibling, shall divulge to the requesting party the present name and address of the sibling. If a sibling cannot be identified or located, the department or placement agency shall notify the requesting party of such circumstances but shall not disclose any names or other information which would tend to identify the sibling. If a sibling is deceased, the department or placement agency shall be authorized to disclose the name and place of burial of the deceased sibling, if known, to the requesting party without the necessity of obtaining a court order.

(B)(i) If six months after receipt of the written request from an adopted person who has reached 21 years of age or a person who has reached 21 years of age and who is the sibling of an adopted person, the placement agency or the department has either been unable to notify one or more of the siblings of the requesting party or has been able to notify a sibling of the requesting party but has not obtained a consent to disclosure from the notified sibling, then the identity of the siblings may only be disclosed as provided in division (ii) of this subparagraph.

(ii) The adopted person who has reached 21 years of age or a person who has reached 21 years of age and who is the sibling of an adopted person may petition the Superior Court of Fulton County to seek the release of the last known name and address of each of the siblings of the petitioning sibling, that are at least 18 years of age, from the department or placement agency. The court shall grant the petition if the court finds that the department or placement agency has made diligent efforts to locate such siblings pursuant to subparagraph (A) of this paragraph either without success or upon locating one or more of the siblings has not obtained a consent to disclosure from all the notified siblings and that failure to release the identity and last known address of said siblings would have an adverse impact upon the physical, mental, or emotional health of the petitioning sibling.

(C) If the adopted person is deceased and leaves a child, such child, upon reaching 21 years of age, may obtain the name and other identifying information concerning the siblings of his or her deceased parent in the same manner that the deceased adopted person would be entitled to obtain such information pursuant to the procedures contained in this Code section.

(6)(A) Upon written request of a biological parent of an adopted person who has reached 21 years of age, the department or a placement agency shall attempt to identify and notify the adopted person. Upon locating the adopted person, the department or the placement agency shall notify the adopted person of the inquiry. Upon the written consent of the adopted person so notified, the department or the placement agency shall forward the biological parent's name and address to the adopted person and, upon further written consent of the adopted person, shall divulge to the requesting biological parent the present name and address of the adopted person. If the adopted person is deceased, the department or placement agency shall be authorized to disclose the name and place of burial of the deceased adopted person, if known, to the requesting biological parent without the necessity of obtaining a court order.

(B)(i) If six months after receipt of the written request from a biological parent of an adopted person who has reached 21 years of age the placement agency or the department has either been unable to notify the adopted person or has been able to notify the adopted person but has not obtained a consent to disclosure from the notified adopted person, then the identity of the adopted person may only be disclosed as provided in division (ii) of this subparagraph.

(ii) The biological parent of an adopted person who has reached 21 years of age may petition the Superior Court of Fulton County to seek the release of the last known name and address of the adopted person from the department or placement agency. The court shall grant the petition if the court finds that the department or placement agency has made diligent efforts to locate such adopted person pursuant to subparagraph (A) of this paragraph either without success or upon locating the adopted person has not obtained a consent to disclosure from the adopted person and that failure to release the identity and last known address of said adopted person would have an adverse impact upon the physical, mental, or emotional health of the petitioning biological parent.

(C) If the biological parent is deceased, a parent or sibling of the deceased biological parent, or both, may obtain the name and other

identifying information concerning the adopted person in the same manner that the deceased biological parent would be entitled to obtain such information pursuant to the procedures contained in this Code section.

(7) If an adoptive parent or the sibling of an adopted person notifies the department or placement agency of the death of an adopted person, the department or placement agency shall add information regarding the date and circumstances of the death to its records so as to enable it to share such information with a biological parent or sibling of the adopted person if they make an inquiry pursuant to the provisions of this Code section.

(8) If a biological parent or parent or sibling of a biological parent notifies the department or placement agency of the death of a biological parent or a sibling of an adopted person, the department or placement agency shall add information regarding the date and circumstances of the death to its records so as to enable it to share such information with an adopted person or sibling of the adopted person if he or she makes an inquiry pursuant to the provisions of this Code section.

(9) The Office of Adoptions within the department shall maintain a registry for the recording of requests by adopted persons for the name of any biological parent, for the recording of the written consent or the written objections of any biological parent to the release of that parent's identity to an adopted person upon the adopted person's request, and for nonidentifying information regarding any biological parent which may be released pursuant to paragraph (2) of this subsection. The department and any placement agency which receives such requests, consents, or objections shall file a copy thereof with that office.

(10) The department or placement agency may charge a reasonable fee to be determined by the department for the cost of conducting any search pursuant to this subsection.

(11) Nothing in this subsection shall be construed to require the department or placement agency to disclose to any party at interest, including but not limited to an adopted person who has reached 21 years of age, any information which is not kept by the department or the placement agency in its normal course of operations relating to adoption.

(12) Any department employee or employee of any placement agency who releases information or makes authorized contacts in good faith and in compliance with this subsection shall be immune from civil or criminal liability for such release of information or authorized contacts.

(13) Information authorized to be released pursuant to this subsection may be released under the conditions specified in this subsection notwithstanding any other provisions of law to the contrary.

(14) A placement agency which demonstrates to the department by clear and convincing evidence that the requirement that such agency search for or notify any biological parent, sibling, or adopted person under subparagraph (A) of paragraph (4) of this subsection or subparagraph (A) of paragraph (5) of this subsection or subparagraph (A) of paragraph (6) of this subsection will impose an undue hardship upon that agency shall be relieved from that responsibility, and the department shall assume that responsibility upon such finding by the department of undue hardship. The department's determination under this subsection shall be a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(15) Whenever this subsection authorizes both the department and a placement agency to perform any function or requires the placement agency to perform any function which the department is also required to perform, the department or agency may designate an agent to perform that function and in so performing it the agent shall have the same authority, powers, duties, and immunities as an employee of the department or placement agency has with respect to performing that function. (Code 1981, § 19-8-23, enacted by Ga. L. 1990, p. 1572, § 5; Ga. L. 1991, p. 1640, §§ 9, 10; Ga. L. 1997, p. 1686, § 7; Ga. L. 1999, p. 252, § 9; Ga. L. 2000, p. 1589, § 3; Ga. L. 2003, p. 503, §§ 6, 7, 8; Ga. L. 2004, p. 631, § 19; Ga. L. 2009, p. 453, §§ 2-2, 2-4/HB 228; Ga. L. 2011, p. 573, § 6/SB 172.)

The 2011 amendment, effective July 1, 2011, rewrote paragraph (d)(1); and in paragraph (d)(2), in the first sentence, substituted "State Adoption Unit of the Division of Family and Children Services" for "Office of Adoptions" near the beginning and inserted "if the adoptee is under 18 years of age" near the middle. See editor's note for applicability.

Editor's notes. — Ga. L. 2011, p. 573, § 8, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all placements of children for adoption and all petitions for adoption filed on or after July 1, 2011.

19-8-26. How surrender of parental rights executed; how and when surrender may be withdrawn; forms.

(a) The surrender of rights by a parent or guardian pursuant to paragraph (1) of subsection (e) of Code Section 19-8-4 shall conform substantially to the following form:

SURRENDER OF RIGHTS

FINAL RELEASE FOR ADOPTION

NOTICE TO PARENT OR GUARDIAN:

This is an important legal document and by signing it you are surrendering all of your right, title, and claim to the child identified herein, so as to facilitate the child's placement for adoption. You are to receive a copy of this document and as explained below have the right to withdraw your surrender within ten days from the date you sign it.

I, the undersigned, being solicitous that my (male) (female) child, born (insert name of child) on (insert birthdate of child), should receive the benefits and advantages of a good home, to the end that (she) (he) may be fitted for the requirements of life, consent to this surrender.

I, the undersigned, (insert relationship to child) of the aforesaid child, do hereby surrender the child to (insert name of child-placing agency or Department of Human Services, as applicable) and promise not to interfere in the management of the child in any respect whatever; and, in consideration of the benefits guaranteed by (insert name of child-placing agency or Department of Human Services, as applicable) in thus providing for the child, I do relinquish all right, title, and claim to the child herein named, it being my wish, intent, and purpose to relinquish absolutely all parental control over the child.

Furthermore, I hereby agree that the (insert name of child-placing agency or Department of Human Services, as applicable) may seek for the child a legal adoption by such person or persons as may be chosen by the (insert name of child-placing agency or Department of Human Services, as applicable) or its authorized agents, without further notice to me. I do, furthermore, expressly waive any other notice or service in any of the legal proceedings for the adoption of the child.

Furthermore, I understand that under Georgia law the Department of Human Services or the child-placing agency is required to conduct an investigation and render a report to the court in connection with the legal proceeding for the legal adoption of the child and I hereby agree to cooperate fully with such department or agency in the conduct of its investigation.

Furthermore, I hereby certify that I have received a copy of this document and that I understand I may only withdraw this surrender

by giving written notice, delivered in person or mailed by registered mail or statutory overnight delivery, to (insert name and address of child-placing agency or Department of Human Services, as applicable) within ten days from the date hereof; that the ten days shall be counted consecutively beginning with the day immediately following the date hereof; however, if the tenth day falls on a Saturday, Sunday, or legal holiday then the last day on which the surrender may be withdrawn shall be the next day that is not a Saturday, Sunday, or legal holiday; and I understand that it may NOT be withdrawn thereafter.

Furthermore, I hereby certify that I have not been subjected to any duress or undue pressure in the execution of this surrender document and do so freely and voluntarily.

Witness my hand and seal this _____ day of _____, ____.

(SEAL)
(Parent or guardian)

Unofficial witness

Notary public
(b) Reserved.

(c) The surrender of rights by a parent or guardian pursuant to paragraph (1) of subsection (e) of Code Section 19-8-5 shall conform substantially to the following form:

SURRENDER OF RIGHTS
FINAL RELEASE FOR ADOPTION
NOTICE TO PARENT OR GUARDIAN:

This is an important legal document and by signing it you are surrendering all of your right, title, and claim to the child identified herein so as to facilitate the child's placement for adoption. You are to receive a copy of this document and as explained below have the right to withdraw your surrender within ten days from the date you sign it.

I, the undersigned, being solicitous that my (male) (female) child, born (insert name of child), on (insert birthdate of child), should receive the benefits and advantages of a good home, to the end that (she) (he) may be fitted for the requirements of life, consent to this surrender.

I, the undersigned, (insert relationship to child) of the aforesaid child, do hereby surrender the child to (insert name, surname not

required, of each person to whom surrender is made), PROVIDED that each such person is named as petitioner in a petition for adoption of the child filed in accordance with Article 1 of Chapter 8 of Title 19 of the Official Code of Georgia Annotated within 60 days from the date hereof. Furthermore, I promise not to interfere in the management of the child in any respect whatever; and, in consideration of the benefits guaranteed by (insert name, surname not required, of each person to whom surrender is made) in thus providing for the child, I do relinquish all right, title, and claim to the child herein named, it being my wish, intent, and purpose to relinquish absolutely all parental control over the child.

It is also my wish, intent, and purpose that if each such person is not named as petitioner in a petition for adoption as provided for above within the 60 day period, other than for excusable neglect, or, if said petition for adoption is filed within 60 days but the adoption action is dismissed with prejudice or otherwise concluded without an order declaring the child to be the adopted child of each such person, then I do hereby surrender the child as follows:

(Mark one of the following as chosen)

— I wish the child returned to me, and I expressly acknowledge that this provision applies only to the limited circumstance that the child is not adopted by the person or persons designated herein and further that this provision does not impair the validity, absolute finality, or totality of this surrender under any circumstance other than the failure of the designated person or persons to adopt the child and that no other provision of this surrender impairs the validity, absolute finality, or totality of this surrender once the revocation period has elapsed; or

— I surrender the child to (insert name of designated licensed child-placing agency), a licensed child-placing agency, for placement for adoption; or

— I surrender the child to the Department of Human Services, as provided by subsection (k) of Code Section 19-8-5, for placement for adoption; and (insert name of designated licensed child-placing agency) or the Department of Human Services may petition the superior court for custody of the child in accordance with the terms of this surrender.

Furthermore, I hereby agree that the child is to be adopted either by each person named above or by any other such person as may be chosen by the (insert name of designated licensed child-placing agency) or the Department of Human Services and I do expressly waive any other notice or service in any of the legal proceedings for the adoption of the child.

Furthermore, I understand that under Georgia law an evaluator is required to conduct and provide to the court a home study and make recommendations to the court regarding the qualification of each person named above to adopt a child concerning the circumstances of placement of my child for adoption. I hereby agree to cooperate fully with such investigations.

Furthermore, I understand that under Georgia law, an agent appointed by the court is required to conduct an investigation and render a report to the court in connection with the legal proceeding for the legal adoption of the child, and I hereby agree to cooperate fully with such agent in the conduct of this investigation.

Furthermore, I hereby certify that I have received a copy of this document and that I understand I may only withdraw this surrender by giving written notice, delivered in person or mailed by registered mail or statutory overnight delivery, to (insert name and address of agent of each person to whom surrender is made) within ten days from the date hereof; that the ten days shall be counted consecutively beginning with the day immediately following the date hereof; provided, however, that if the tenth day falls on a Saturday, Sunday, or legal holiday, then the last day on which the surrender may be withdrawn shall be the next day that is not a Saturday, Sunday, or legal holiday; and I understand that it may NOT be withdrawn thereafter.

Furthermore, I hereby certify that I have not been subjected to any duress or undue pressure in the execution of this surrender document and do so freely and voluntarily.

Witness my hand and seal this _____ day of _____, ____.

(SEAL)
(Parent or guardian)

Unofficial witness

Sworn to and subscribed
before me this _____
day of _____, ____.

Notary public (SEAL)
My commission expires _____.

(d) The surrender of rights by a biological father who is not the legal father of the child pursuant to paragraph (2) of subsection (e) of Code Section 19-8-4, 19-8-5, 19-8-6, or 19-8-7 shall conform substantially to the following form:

SURRENDER OF RIGHTS

FINAL RELEASE FOR ADOPTION

NOTICE TO ALLEGED BIOLOGICAL FATHER:

This is an important legal document and by signing it you are surrendering all of your right, title, and claim to the child identified herein, so as to facilitate the child's placement for adoption. You are to receive a copy of this document and as explained below have the right to withdraw your surrender within ten days from the date you sign it.

I, the undersigned, alleged biological father of a (male) (female) child, born (insert name of child) to (insert name of mother) on (insert birthdate of child), being solicitous that said child should receive the benefits and advantages of a good home, to the end that (she) (he) may be fitted for the requirements of life, consent to this surrender.

I, the undersigned, do hereby surrender the child. I promise not to interfere in the management of the child in any respect whatever; and, in consideration of the benefits provided to the child through adoption, I do relinquish all right, title, and claim to the child herein named, it being my wish, intent, and purpose to relinquish absolutely all control over the child.

Furthermore, I hereby agree that the child is to be adopted and I do expressly waive any other notice or service in any of the legal proceedings for the adoption of the child.

Furthermore, I understand that under Georgia law an agent appointed by the court is required to conduct an investigation and render a report to the court in connection with the legal proceeding for the legal adoption of the child and I hereby agree to cooperate fully with the agent appointed by the court in the conduct of this investigation.

Furthermore, I hereby certify that I have received a copy of this document and that I understand I may only withdraw this surrender by giving written notice, delivered in person or mailed by registered mail or statutory overnight delivery, to (insert name and address of child-placing agency representative, Department of Human Services representative, person to whom surrender is made, or petitioner's representative, as appropriate) within ten days from the date hereof; that the ten days shall be counted consecutively beginning with the day immediately following the date hereof; however, if the tenth day falls on a Saturday, Sunday, or legal holiday then the last day on which the surrender may be withdrawn shall be the next day that is

not a Saturday, Sunday, or legal holiday; and I understand that it may NOT be withdrawn thereafter.

Furthermore, I hereby certify that I have not been subjected to any duress or undue pressure in the execution of this surrender document and do so freely and voluntarily.

Witness my hand and seal this _____ day of _____, ____.

_____ (SEAL)
(Alleged biological father)

Unofficial witness

Sworn to and subscribed

before me this _____

day of _____, _____.

Notary public (SEAL)

My commission expires _____.

(e) The surrender of rights by a parent or guardian pursuant to paragraph (1) of subsection (e) of Code Section 19-8-6 or 19-8-7 shall conform substantially to the following form:

SURRENDER OF RIGHTS

FINAL RELEASE FOR ADOPTION

NOTICE TO PARENT OR GUARDIAN:

This is an important legal document and by signing it you are surrendering all of your right, title, and claim to the child identified herein, so as to facilitate the child’s placement for adoption. You are to receive a copy of this document and as explained below have the right to withdraw your surrender within ten days from the date you sign it.

I, the undersigned, being solicitous that my (male) (female) child, born (insert name of child), on (insert birthdate of child), should receive the benefits and advantages of a good home, to the end that (she) (he) may be fitted for the requirements of life, consent to this surrender.

I, the undersigned, (insert relationship to child) of the aforesaid child, do hereby surrender the child to (insert name of each person to whom surrender is made) and promise not to interfere in the

management of the child in any respect whatever; and, in consideration of the benefits guaranteed by (insert name of each person to whom surrender is made) in thus providing for the child, I do relinquish all right, title, and claim to the child herein named, it being my wish, intent, and purpose to relinquish absolutely all parental control over the child.

Furthermore, I hereby agree that (insert name of each person to whom surrender is made) may initiate legal proceedings for the legal adoption of the child without further notice to me. I do, furthermore, expressly waive any other notice or service in any of the legal proceedings for the adoption of the child.

Furthermore, I understand that under Georgia law the Department of Human Services may be required to conduct an investigation and render a report to the court in connection with the legal proceeding for the legal adoption of the child and I hereby agree to cooperate fully with the department in the conduct of its investigation.

Furthermore, I hereby certify that I have received a copy of this document and that I understand I may only withdraw this surrender by giving written notice, delivered in person or mailed by registered mail or statutory overnight delivery, to (insert name and address of each person to whom surrender is made) within ten days from the date hereof; that the ten days shall be counted consecutively beginning with the day immediately following the date hereof; however, if the tenth day falls on a Saturday, Sunday, or legal holiday then the last day on which the surrender may be withdrawn shall be the next day that is not a Saturday, Sunday, or legal holiday; and I understand it may NOT be withdrawn thereafter.

Furthermore, I hereby certify that I have not been subjected to any duress or undue pressure in the execution of this surrender document and do so freely and voluntarily.

Witness my hand and seal this _____ day of _____, ____.

_____ (SEAL)
(Parent or guardian)

Unofficial witness

Notary public

(f) The pre-birth surrender of rights by a biological father who is not the legal father of the child pursuant to paragraph (3) of subsection (e) of Code Section 19-8-4, 19-8-5, or 19-8-7 shall conform substantially to the following form:

PRE-BIRTH SURRENDER OF RIGHTS

FINAL RELEASE FOR ADOPTION

NOTICE TO ALLEGED BIOLOGICAL FATHER

This is an important legal document and by signing it you are surrendering any and all of your right, title, and claim to the child identified herein, so as to facilitate the child's placement for adoption. You have the right to wait to execute a Surrender of Rights Final Release for Adoption after the child is born, but by signing this document you are electing to surrender your rights prior to the birth of this child. You are to receive a copy of this document and as explained below have the right to withdraw your pre-birth surrender within ten days from the date you sign it.

I, the undersigned, understand that I have been named by _____, the mother of the child expected to be born in _____(city) _____(county) _____(state) on or about the _____day of _____(month), _____(year), as the biological father or possible biological father of her child. I further understand that the mother wishes to place this child for adoption.

To the best of my knowledge and belief, the child has not been born as of the date I am signing this pre-birth surrender; however, if in fact the child has been born, this surrender shall have the same effect as if it were a surrender executed following the birth of the child.

I understand that by signing this document I am not admitting that I am the biological father of this child, but if I am, I hereby agree that adoption is in this child's best interest. I consent to adoption of this child by any person chosen by the child's mother or by any public or private child-placing agency without further notice to me. I expressly waive any other notice or service in any of the legal proceedings for the adoption of the child.

I understand that I have the option to wait until after the child is born to execute a surrender of my rights (with a corresponding ten-day right of withdrawal) and, further, that by executing this document I am electing instead to surrender my rights before the child's birth.

I further understand that execution of this document does not fully and finally terminate my responsibilities until a final order of adoption is entered. I understand that if the child is not adopted, legal proceedings can be brought to establish paternity, and I may become liable for financial obligations related to the birth and support of this child.

Furthermore, I hereby certify that I have received a copy of this document and that I understand that I may only withdraw this

pre-birth surrender by giving written notice, delivered in person or by statutory overnight delivery or registered mail, return receipt requested, to _____ within ten days from the date hereof; that the ten days shall be counted consecutively beginning with the day immediately following the date hereof; that, however, if the tenth day falls on a Saturday, Sunday, or legal holiday, then the last day on which the surrender may be withdrawn shall be the next day that is not a Saturday, Sunday, or legal holiday; and that it may NOT be withdrawn thereafter.

If prior to my signing this pre-birth surrender I have registered on Georgia's putative father registry then if I do not withdraw this surrender within the time permitted, I waive the notice I would be entitled to receive pursuant to the provisions of Code Section 19-8-12 of the Official Code of Georgia Annotated because of my registration on the putative father registry.

Furthermore, I hereby certify that I have not been subjected to any duress or undue pressure in the execution of this document and do so freely and voluntarily.

Witness my hand and seal this _____ day of _____, _____.

_____(SEAL)
Alleged biological father

Unofficial Witness

Sworn to and subscribed
before me on this _____ day of _____, _____.

Notary Public

Seal

My commission expires: _____.

(g) The acknowledgment of surrender of rights pursuant to subsection (f) of Code Section 19-8-4, 19-8-5, 19-8-6, or 19-8-7 shall conform substantially to the following form:

ACKNOWLEDGMENT OF SURRENDER
OF RIGHTS

By execution of this paragraph, the undersigned expressly acknowledges:

(A) That I have read the accompanying SURRENDER OF RIGHTS/FINAL RELEASE FOR ADOPTION relating to said mi-

nor child born (insert name of child), a (male) (female) on (insert birthdate of child);

(B) That I understand that this is a full, final, and complete surrender, release, and termination of all of my rights to the child;

(C) That I have the unconditional right to revoke the surrender by giving written notice, delivered in person or mailed by registered mail or statutory overnight delivery, to (insert name and address of each person or entity to whom surrender is made) not later than ten days from the date of the surrender and that after such ten-day period I shall have no right to revoke the surrender;

(D) That the ten days shall be counted consecutively beginning with the day immediately following the date the surrender is executed; however, if the tenth day falls on a Saturday, Sunday, or legal holiday then the last day on which the surrender may be withdrawn shall be the next day that is not a Saturday, Sunday, or legal holiday;

(E) That I have read the accompanying surrender and received a copy thereof;

(F) That any and all questions regarding the effect of said surrender and its provisions have been satisfactorily explained to me;

(G) That I have been afforded an opportunity to consult with counsel of my choice prior to execution of the surrender; and

(H) That the surrender of my rights has been knowingly, intentionally, freely, and voluntarily made by me.

Witness my hand and seal this _____ day of _____, _____.

(Parent, guardian, or biological father)

Unofficial witness

Notary public

(h) The affidavit of a legal mother required by subsection (g) of Code Section 19-8-4, 19-8-5, 19-8-6, or 19-8-7 shall meet the following requirements:

- (1) The affidavit shall set forth:
 - (A) Her name;
 - (B) Her relationship to the child;

(C) Her age;

(D) Her marital status;

(E) The identity and last known address of any spouse or former spouse;

(F) The identity, last known address, and relationship to the mother of the biological father of her child, provided that the mother shall have the right not to disclose the name and address of the biological father of her child should she so desire;

(G) Whether or not the biological father of the child has lived with the child, contributed to its support, provided for the mother's support or medical care during her pregnancy or during her hospitalization for the birth of the child, or made an attempt to legitimate the child; and

(H) All financial assistance received by or promised her either directly or indirectly, from whatever source, in connection with her pregnancy, the birth of the child, or the placement or arranging for the placement of the child for adoption (including the date, amount or value, description, payor, and payee), provided that financial assistance provided directly by the mother's husband, mother, father, sister, brother, aunt, uncle, grandfather, or grandmother need not be detailed and instead the mother need only state the nature of the assistance received; and

(2) The affidavit shall conform substantially to the following form:

MOTHER'S AFFIDAVIT

NOTICE TO MOTHER:

This is an important legal document which deals with your child's right to have its father's rights properly determined. If you decline to disclose the name and address of the biological father of your child, understand that you may be required to appear in court to explain your refusal and that your name may be used in connection with the publication of notice to the biological father. Understand that you are providing this affidavit under oath and that the information provided will be held in strict confidence and will be used only in connection with the adoption of your child.

STATE OF GEORGIA

COUNTY OF _____

Personally appeared before me, the undersigned officer duly authorized to administer oaths, _____, who, after having been sworn, deposes and says as follows:

That my name is _____.

That I am the mother of a (male) (female) child born (insert name of child) in the State of _____, County of _____ on (insert birthdate of child).

That I am _____ years of age, having been born in the State of _____, County of _____ on _____.

That my social security account number is _____.

That my marital status at the time of the conception of my child was (check the status and complete the appropriate information):

() Single, never having been married.

() Separated but not legally divorced; the name of my spouse is _____; his last known address is _____; we were married in the State of _____, County of _____ on _____; we have been separated since _____; we last had sexual relations on _____.

() Divorced; the name of my previous spouse is _____; we were married in the State of _____, County of _____ on _____; his last known address is _____; divorce granted in the State of _____, County of _____ on _____.

() Legally married; the name of my spouse (was) (is) _____; we were married in the State of _____, County of _____ on _____; and his last known address is _____.

() Married through common-law marriage relationship prior to January 1, 1997; the name of my spouse (was) (is) _____; his last known address is _____; our relationship began in the State of _____, County of _____ on _____.

() Widowed; the name of my deceased spouse was _____; we were married in the State of _____, County of _____ on _____; and he died on _____ in the County of _____, State of _____.

That my name and marital status at the time of the birth of my child was (check the status and complete the appropriate information):

Name _____

() Single, never having been married.

() Separated, but not legally divorced; the name of my spouse (was) (is) _____; his last known address is _____; we were married in the State of _____, County of _____ on _____; we have been separated since _____; we last had sexual relations on _____.

() Divorced; the name of my former spouse is _____; we were married in the State of _____, County of _____ on _____; his last known address is _____; divorce granted in the State of _____, County of _____.

() Legally Married; the name of my spouse (was) (is) _____; we were married in the State of _____, County of _____ on _____ on _____; and his last known address is _____.

() Married through common-law relationship prior to January 1, 1997; the name of my spouse (was) (is) _____; his last known address is _____; our relationship began in the State of _____, County of _____ on _____.

() Widowed; the name of my deceased spouse was _____; we were married in the State of _____, County of _____ on _____; and he died on _____ in the County of _____, State of _____.

That the name of the biological father of my child is (complete appropriate response):

Known to me and is (_____);

Known to me but I expressly decline to identify him because _____; or

Unknown to me because _____

That the last known address of the biological father of my child is (complete appropriate response):

Known to me and is _____;

Known to me but I expressly decline to provide his address because _____; or

Unknown to me because

That, to the best of my knowledge, I (am) (am not) of American Indian heritage. If so:

(A) The name of my American Indian tribe is _____ and the percentage of my American Indian blood is _____ percent.

(B) My relatives with American Indian blood are:

(C) I (am) (am not) a member of an American Indian tribe. If so, the name of the tribe is _____.

(D) I (am) (am not) registered with an American Indian tribal registry. If so, the American Indian tribal registry is: _____ and my registration or identification number is: _____.

(E) A member of my family (is) (is not) a member of an American Indian tribe. If so, the name of each such family member is: _____ and the name of the corresponding American Indian tribe is: _____.

(F) A member of my family (is) (is not) registered with an American Indian tribal registry. If so, the name of each such family member is: _____ and the name of the corresponding American Indian tribal registry is: _____ and their corresponding registration or identification numbers are: _____.

That to the best of my knowledge, the biological father (is) (is not) of American Indian heritage. If so:

(A) The name of his American Indian tribe is _____ and the percentage of his American Indian blood is _____ percent.

(B) His relatives with American Indian blood are:

(C) He (is) (is not) a member of an American Indian tribe. If so, the name of the tribe is:_____.

(D) He (is) (is not) registered with an American Indian tribal registry. If so, the American Indian tribal registry is: _____ and his registration or identification number is: _____.

That the date of birth of the biological father (was _____, _____) or (is not known to me).

That the biological father (is) (is not) on active duty in a branch of the United States armed forces. If so:

(A) The branch of his service is (Army) (Navy) (Marine) (Air Force) (Coast Guard).

(B) His rank is _____.

(C) His duty station is _____.

If applicable, please provide any additional available information regarding his military service.

_____.

That the biological father of my child, whether or not identified herein (strike each inappropriate phrase):

(Was) (Was not) married to me at the time this child was conceived;

(Was) (Was not) married to me at any time during my pregnancy with this child;

(Was) (Was not) married to me at the time that this child was born;

(Did) (Did not) marry me after the child was born and recognize the child as his own;

(Has) (Has not) been determined to be the child's father by a final paternity order of a court;

(Has) (Has not) legitimated the child by a final court order;

(Has) (Has not) lived with the child;

(Has) (Has not) contributed to its support;

(Has) (Has not) provided for my support during my pregnancy or hospitalization for the birth of the child;

(Has) (Has not) provided for my medical care during my pregnancy or hospitalization for the birth of the child; and

(Has) (Has not) made any attempt to legitimate the child.

That I have received or been promised the following financial assistance, either directly or indirectly, from whatever source, in connection with my pregnancy, the birth of my child, and its placement for adoption: _____.

That I recognize that if I knowingly and willfully make a false statement in this affidavit, I will be guilty of the crime of false swearing.

(Biological mother's signature)

Sworn to and subscribed
before me this _____
day of _____, _____.

Notary public (SEAL)
My Commission Expires _____.

(i) The affidavit of an adoptive mother required by subsection (a) of Code Section 19-8-9 for the surrender of her rights shall meet the following requirements:

(1) The affidavit shall set forth:

- (A) Her name;
- (B) Her relationship to the child;
- (C) Her age;
- (D) Her marital status;

(E) The name and last known address of any spouse at the time the child was adopted and whether any such spouse also adopted the child or was the biological father of the child;

(F) The circumstances surrounding her adoption of her child, including the date the adoption was finalized, the state and county where finalized, and the name and address of the adoption agency, if any; and

(G) All financial assistance received by or promised her either directly or indirectly, from whatever source, in connection with the placement or arranging for the placement of her child for adoption (including the date, amount or value, description, payor, and payee), provided that financial assistance provided directly by the adoptive mother's husband, mother, father, sister, brother, aunt,

uncle, grandfather, or grandmother need not be detailed and instead the adoptive mother need only state the nature of the assistance received.

(2) The affidavit shall be in substantially the following form:

ADOPTIVE MOTHER'S AFFIDAVIT

NOTICE TO MOTHER:

This is an important legal document which deals with your child's right to have its legal father's rights properly terminated. Understand that you are providing this affidavit under oath and that the information provided will be held in strict confidence and will be used only in connection with the adoption of your child.

STATE OF GEORGIA

COUNTY OF _____

Personally appeared before me, the undersigned officer duly authorized to administer oaths, _____, who, after having been sworn, deposes and says as follows:

That my name is _____.

That I am the adoptive mother of a (male) (female) child born (insert name of child) in the State of _____, County of _____ on (insert birthdate of child).

That I am _____ years of age, having been born in the State of _____, County of _____ on _____.

That my marital status is (check the status and complete the appropriate information):

() Single, never having been married.

() Separated but not legally divorced; the name of my spouse is _____; his last known address is _____; we were married in the State of _____, County of _____ on _____; we have been separated since _____; my spouse (did) (did not) also adopt said child; my spouse (is) (is not) the biological father of said child.

() Divorced; the name of my previous spouse is _____; we were married in the State of _____, County of _____ on _____; his last known address is _____; divorce granted in the State of _____, County of _____ on _____; my previous spouse (did) (did not) also adopt said child; my previous spouse (is) (is not) the biological father of said child.

() Legally married; the name of my spouse is _____; we were married in the State of _____, County of _____ on _____; his last known address is _____; my spouse (did) (did not) also adopt said child; my spouse (is) (is not) the biological father of said child.

() Married through common-law marriage relationship; the name of my spouse is _____; his address is _____; the date and place our relationship began is (date, county, state); my spouse (did) (did not) also adopt said child; my spouse (is) (is not) the biological father of said child.

() Widowed; the name of my deceased spouse is _____; we were married in the State of _____, County of _____ on _____; he died on _____ in the County of _____, State of _____; he (did) (did not) also adopt said child; and he (was) (was not) the biological father of said child.

That I adopted my child in the State of _____, County of _____;

That the final order of adoption was entered on _____;

That there (was) (was not) an adoption agency involved in the placement of my child with me for adoption; and if so its name was _____,

and its address is _____.

That I have received or been promised the following financial assistance, either directly or indirectly, from whatever source, in connection with my child's placement for adoption: _____.

That I recognize that if I knowingly and willfully make a false statement in this affidavit, I will be guilty of the crime of false swearing.

(Adoptive mother)

Sworn to and subscribed
before me this _____
day of _____, _____.

Notary public

(j) The affidavit of an agency or department representative required by subsection (h) of Code Section 19-8-4 shall conform substantially to the following form:

AFFIDAVIT OF AGENCY OR
DEPARTMENT REPRESENTATIVE

Personally appeared before me, the undersigned officer duly authorized to administer oaths, _____, who, after having been sworn, deposes and says as follows:

That I am (position) of (department or agency).

That prior to the execution of the accompanying SURRENDER OF RIGHTS/FINAL RELEASE FOR ADOPTION by _____, releasing and surrendering all of (his) (her) rights in a (male) (female) minor child born (insert name of child) on (insert birthdate of child), I reviewed with and explained to said individual all of the provisions of the surrender, and particularly the provisions which provide that the surrender is a full surrender of all rights to the child.

That based on my review and explanation to said individual, it is my opinion that said individual knowingly, intentionally, freely, and voluntarily executed the SURRENDER OF RIGHTS/FINAL RELEASE FOR ADOPTION.

(Agency representative)

Sworn to and subscribed
before me this _____
day of _____, _____.

Notary public

(k) The affidavit of a petitioner's representative required by subsection (h) of Code Section 19-8-5, 19-8-6, or 19-8-7 shall conform substantially to the following form:

AFFIDAVIT OF PETITIONER'S REPRESENTATIVE

Personally appeared before me, the undersigned officer duly authorized to administer oaths, _____, who, after having been sworn, deposes and says as follows:

That my name is _____.

That my address is _____.

That prior to the execution of the accompanying SURRENDER OF RIGHTS/FINAL RELEASE FOR ADOPTION by _____, releasing and surrendering all of (his) (her) rights in a (male) (female) minor child born (insert name of child) on (insert birthdate of child), I reviewed with and explained

to said individual all of the provisions of the surrender, and particularly the provisions which provide that the surrender is a full surrender of all rights to the child.

That based on my review and explanation to said individual, it is my opinion that said individual knowingly, intentionally, freely, and voluntarily executed the SURRENDER OF RIGHTS/FINAL RELEASE FOR ADOPTION.

(Petitioner’s representative)

Sworn to and subscribed
before me this _____
day of _____, _____.

Notary public

(l) The parental consent to a stepparent adoption required by sub-section (j) of Code Section 19-8-6 shall conform substantially to the following form:

PARENTAL CONSENT TO STEPPARENT ADOPTION

I, the undersigned, hereby consent that my spouse (insert name of spouse) adopt my (son) (daughter), (insert name of child), whose date of birth is _____, and in so doing I in no way relinquish or surrender my parental rights to the child.

I further acknowledge service of a copy of the petition for adoption of the child as filed on behalf of my spouse, and I hereby consent to the granting of the prayers of the petition. I also waive all other and further service and notice of any kind and nature in connection with the proceedings.

This _____ day of _____, _____.

(Parent)

Unofficial witness

Notary public

(Code 1981, § 19-8-26, enacted by Ga. L. 1990, p. 1572, § 5; Ga. L. 1999, p. 81, § 19; Ga. L. 1999, p. 252, § 10; Ga. L. 2000, p. 136, § 19; Ga. L. 2000, p. 1589, § 4; Ga. L. 2004, p. 631, § 19; Ga. L. 2007, p. 342, § 9/HB 497; Ga. L. 2008, p. 324, § 19/SB 455; Ga. L. 2009, p. 8, § 19/SB 46; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2009, p. 800, § 4/HB 388; Ga. L. 2011, p. 573, § 7/SB 172.)

The 2011 amendment, effective July 1, 2011, in subsection (c), made minor punctuation changes throughout, inserted “that” in the first sentence of the third paragraph, added the present tenth paragraph, and substituted “provided, however, that” for “however,” in the twelfth paragraph. See editor’s note for applicability.

Editor’s notes. — Ga. L. 2011, p. 573, § 8, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all placements of children for adoption and all petitions for adoption filed on or after July 1, 2011.

JUDICIAL DECISIONS

Cited in *In the Interest of V.B.L.*, 306 Ga. App. 709, 703 S.E.2d 127 (2010).

19-8-27. Postadoption contact agreements; definitions; procedure; jurisdiction; warnings; enforcement or termination; modification; costs and expenses of mediation, alternative dispute resolution, and litigation.

(a) As used in this Code section, the term “birth relative” means:

(1) A parent, biological father who is not the legal father, grandparent, brother, sister, half-brother, or half-sister who is related by blood or marriage to a child who is being adopted or who has been adopted; or

(2) A grandparent, brother, sister, half-brother, or half-sister who is related by adoption to a child who is being adopted or who has been adopted.

(b)(1) An adopting parent or parents and birth relatives or an adopting parent or parents, birth relatives, and a child who is 14 years of age or older who is being adopted or who has been adopted may voluntarily enter into a written postadoption contact agreement to permit continuing contact between such birth relatives and such child. A child who is 14 years of age or older shall be considered a party to a postadoption contact agreement.

(2) A postadoption contact agreement may provide for privileges regarding a child who is being adopted or who has been adopted, including, but not limited to, visitation with such child, contact with such child, sharing of information about such child, or sharing of information about birth relatives.

(3) In order to be an enforceable postadoption contact agreement, such agreement shall be in writing and signed by all of the parties to such agreement acknowledging their consent to its terms and conditions.

(4) Enforcement, modification, or termination of a postadoption contact agreement shall be under the continuing jurisdiction of the

court that granted the petition of adoption; provided, however, that the parties to a postadoption contact agreement may expressly waive the right to enforce, modify, or terminate such agreement under this Code section.

(5) Any party to the postadoption contact agreement may, at any time, file the original postadoption contact agreement with the court that has or had jurisdiction over the adoption if such agreement provides for the court to enforce such agreement or such agreement is silent as to the issue of enforcement.

(c) A postadoption contact agreement shall contain the following warnings in at least 14 point boldface type:

(1) After the entry of a decree for adoption, an adoption cannot be set aside due to the failure of an adopting parent, a birth parent, a birth relative, or the child to follow the terms of this agreement or a later change to this agreement; and

(2) A disagreement between the parties or litigation brought to enforce, terminate, or modify this agreement shall not affect the validity of the adoption and shall not serve as a basis for orders affecting the custody of the child.

(d)(1) As used in this subsection, the term “parties” means the individuals who signed the postadoption contact agreement currently in effect, including the child if he or she is 14 years of age or older at the time of the action regarding such agreement, but such term shall exclude any third-party beneficiary to such agreement.

(2) A postadoption contact agreement may always be modified or terminated if the parties have voluntarily signed a written modified postadoption contact agreement or termination of a postadoption contact agreement. A modified postadoption contact agreement may be filed with the court if such agreement provides for the court to enforce such agreement or such agreement is silent as to the issue of enforcement.

(e) With respect to postadoption contact agreements that provide for court enforcement or termination or are silent as to such matters, any party, as defined in paragraph (1) of subsection (d) of this Code section, may file a petition to enforce or terminate such agreement with the court that granted the petition of adoption, and the court shall enforce the terms of such agreement or terminate such agreement if such court finds by a preponderance of the evidence that the enforcement or termination is necessary to serve the best interests of the child.

(f) With respect to postadoption contact agreements that provide for court modification or are silent as to modification, only the adopting parent or parents may file a petition seeking modification. Such petition

shall be filed with the court that granted the petition of adoption, and the court shall modify such agreement if such court finds by a preponderance of the evidence that the modification is necessary to serve the best interests of the child and there has been a material change of circumstances since the current postadoption contact agreement was executed.

(g) A court may require the party seeking modification, termination, or enforcement of a postadoption contact agreement to participate in mediation or other appropriate alternative dispute resolution.

(h) All reasonable costs and expenses of mediation, alternative dispute resolution, and litigation shall be borne by the party, other than the child, filing the action to enforce, modify, or terminate a postadoption contact agreement when no party has been found by the court as failing to comply with an existing postadoption contact agreement. Otherwise, a party, other than the child, found by the court as failing to comply without good cause with an existing postadoption contact agreement shall bear all the costs and expenses of mediation, alternative dispute resolution, and litigation of the other party.

(i) A court shall not set aside a decree of adoption, rescind a surrender, or modify an order to terminate parental rights or any other prior court order because of the failure of an adoptive parent, a birth relative, or the child to comply with any or all of the original terms of, or subsequent modifications to, a postadoption contact agreement. (Code 1981, § 19-8-27, enacted by Ga. L. 2013, p. 1097, § 1/HB 21.)

Effective date. — This Code section became effective July 1, 2013.

ARTICLE 2

OPTION OF ADOPTION

19-8-40. Definitions.

Law reviews. — For annual survey of law on domestic relations, see 62 Mercer L. Rev. 105 (2010).

CHAPTER 9

CHILD CUSTODY PROCEEDINGS

Article 1		Sec.	
General Provisions			
Sec.			educational needs; review of visitation rights; grandparent visitation; policy; retention of jurisdiction; attorney's fees; filing of domestic relations final disposition form; application to military parents.
19-9-1.	Parenting plans; requirements for plan.		
19-9-3.	Discretion of judge in custody disputes; right of child 14 years old or older to select custodial parent; consideration of child's	19-9-6.	Definitions.

ARTICLE 1

GENERAL PROVISIONS

19-9-1. Parenting plans; requirements for plan.

(a) Except when a parent seeks emergency relief for family violence pursuant to Code Section 19-13-3 or 19-13-4, in all cases in which the custody of any child is at issue between the parents, each parent shall prepare a parenting plan or the parties may jointly submit a parenting plan. It shall be in the judge's discretion as to when a party shall be required to submit a parenting plan to the judge. A parenting plan shall be required for permanent custody and modification actions and in the judge's discretion may be required for temporary hearings. The final decree in any legal action involving the custody of a child, including modification actions, shall incorporate a permanent parenting plan.

(b)(1) Unless otherwise ordered by the judge, a parenting plan shall include the following:

(A) A recognition that a close and continuing parent-child relationship and continuity in the child's life will be in the child's best interest;

(B) A recognition that the child's needs will change and grow as the child matures and demonstrate that the parents will make an effort to parent that takes this issue into account so that future modifications to the parenting plan are minimized;

(C) A recognition that a parent with physical custody will make day-to-day decisions and emergency decisions while the child is residing with such parent; and

(D) That both parents will have access to all of the child's records and information, including, but not limited to, education, health,

health insurance, extracurricular activities, and religious communications.

(2) Unless otherwise ordered by the judge, or agreed upon by the parties, a parenting plan shall include, but not be limited to:

(A) Where and when a child will be in each parent's physical care, designating where the child will spend each day of the year;

(B) How holidays, birthdays, vacations, school breaks, and other special occasions will be spent with each parent including the time of day that each event will begin and end;

(C) Transportation arrangements including how the child will be exchanged between the parents, the location of the exchange, how the transportation costs will be paid, and any other matter relating to the child spending time with each parent;

(D) Whether supervision will be needed for any parenting time and, if so, the particulars of the supervision;

(E) An allocation of decision-making authority to one or both of the parents with regard to the child's education, health, extracurricular activities, and religious upbringing, and if the parents agree the matters should be jointly decided, how to resolve a situation in which the parents disagree on resolution;

(F) What, if any, limitations will exist while one parent has physical custody of the child in terms of the other parent contacting the child and the other parent's right to access education, health, extracurricular activity, and religious information regarding the child; and

(G) If a military parent is a party in the case:

(i) How to manage the child's transition into temporary physical custody to a nondeploying parent if a military parent is deployed;

(ii) The manner in which the child will maintain continuing contact with a deployed parent;

(iii) How a deployed parent's parenting time may be delegated to his or her extended family;

(iv) How the parenting plan will be resumed once the deployed parent returns from deployment; and

(v) How divisions (i) through (iv) of this subparagraph serve the best interest of the child.

(c) If the parties cannot reach agreement on a permanent parenting plan, each party shall file and serve a proposed parenting plan on or

before the date set by the judge. Failure to comply with filing a parenting plan may result in the judge adopting the plan of the opposing party if the judge finds such plan to be in the best interests of the child. (Orig. Code 1863, § 1685; Code 1868, § 1728; Code 1873, § 1733; Code 1882, § 1733; Civil Code 1895, § 2452; Civil Code 1910, § 2971; Code 1933, § 30-127; Ga. L. 1957, p. 412, § 1; Ga. L. 1962, p. 713, § 1; Ga. L. 1976, p. 1050, § 1; Ga. L. 1978, p. 258, § 2; Ga. L. 1983, p. 632, § 1; Ga. L. 1984, p. 22, § 19; Ga. L. 1986, p. 1000, § 1; Ga. L. 1986, p. 1036, § 1; Ga. L. 1988, p. 1368, § 1; Ga. L. 1992, p. 1656, § 1; Ga. L. 1995, p. 863, § 5; Ga. L. 1999, p. 329, § 3; Ga. L. 2000, p. 1292, § 1; Ga. L. 2007, p. 554, § 5/HB 369; Ga. L. 2011, p. 274, § 2/SB 112; Ga. L. 2013, p. 553, § 2/SB 1.)

The 2011 amendment, effective May 11, 2011, in paragraph (b)(2), deleted “and” from the end of subparagraph (b)(2)(E), substituted “; and” for a period at the end of subparagraph (b)(2)(F), and added subparagraph (b)(2)(G).

The 2013 amendment, effective July 1, 2013, inserted “health insurance,” near the end of subparagraph (b)(1)(D).

Cross references. — Parenting plan, Uniform Rules for the Superior Courts of Georgia, Rule 24.10.

Editor’s notes. — Ga. L. 2011, p. 274, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘Military Parents Rights Act.’”

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
VISITATION RIGHTS

General Consideration

Father’s failure to file competing parenting plan. — Although a father failed to file a competing parenting plan in the mother’s proceeding to modify their current plan, that did not compel adoption of the mother’s plan. *Gilchrist v. Gilchrist*, 323 Ga. App. 555, 747 S.E.2d 75 (2013).

Visitation Rights

Parenting plan provided sufficient detail. — Parenting plan provided for the day-to-day schedule to apply for Thanksgiving and spring vacation and stated that the parties would alternate federal holidays. *Eldridge v. Eldridge*, 291 Ga. 762, 732 S.E.2d 411 (2012).

19-9-2. Right of surviving parent to custody of child; discretion of judge.

Law reviews. — For annual survey on domestic relations law, see 64 Mercer L. Rev. 121 (2012).

JUDICIAL DECISIONS

Grandparents seeking custody after surviving parent allegedly murdered the other. — Trial court erroneously concluded that the grandparents’

petition seeking custody of a mother’s children failed to state a claim because the custody petition gave fair notice that the grandparents sought custody of the child

under O.C.G.A. §§ 19-7-1(b.1) and 19-9-2 based upon the mother's alleged murder of the father; those allegations were sufficient to survive a motion to dismiss. *Scott v. Scott*, 311 Ga. App. 726, 716 S.E.2d 809 (2011).

Grandparents seeking custody. — Trial court properly determined that collateral estoppel did not bar the grandparents' petition for custody of a mother's children because different issues were ac-

tually and necessarily decided in the grandparents' visitation action; in the visitation action, the issues were harm to the child if visitation was not granted and whether visitation would be in the best interest of the children, and in the custody action, the issues were whether the children would suffer physical or emotional harm if custody remained with the mother. *Scott v. Scott*, 311 Ga. App. 726, 716 S.E.2d 809 (2011).

19-9-3. Discretion of judge in custody disputes; right of child 14 years old or older to select custodial parent; consideration of child's educational needs; review of visitation rights; grandparent visitation; policy; retention of jurisdiction; attorney's fees; filing of domestic relations final disposition form; application to military parents.

(a)(1) In all cases in which the custody of any child is at issue between the parents, there shall be no prima-facie right to the custody of the child in the father or mother. There shall be no presumption in favor of any particular form of custody, legal or physical, nor in favor of either parent. Joint custody may be considered as an alternative form of custody by the judge and the judge at any temporary or permanent hearing may grant sole custody, joint custody, joint legal custody, or joint physical custody as appropriate.

(2) The judge hearing the issue of custody shall make a determination of custody of a child and such matter shall not be decided by a jury. The judge may take into consideration all the circumstances of the case, including the improvement of the health of the party seeking a change in custody provisions, in determining to whom custody of the child should be awarded. The duty of the judge in all such cases shall be to exercise discretion to look to and determine solely what is for the best interest of the child and what will best promote the child's welfare and happiness and to make his or her award accordingly.

(3) In determining the best interests of the child, the judge may consider any relevant factor including, but not limited to:

(A) The love, affection, bonding, and emotional ties existing between each parent and the child;

(B) The love, affection, bonding, and emotional ties existing between the child and his or her siblings, half siblings, and stepsiblings and the residence of such other children;

(C) The capacity and disposition of each parent to give the child love, affection, and guidance and to continue the education and rearing of the child;

(D) Each parent's knowledge and familiarity of the child and the child's needs;

(E) The capacity and disposition of each parent to provide the child with food, clothing, medical care, day-to-day needs, and other necessary basic care, with consideration made for the potential payment of child support by the other parent;

(F) The home environment of each parent considering the promotion of nurturance and safety of the child rather than superficial or material factors;

(G) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;

(H) The stability of the family unit of each of the parents and the presence or absence of each parent's support systems within the community to benefit the child;

(I) The mental and physical health of each parent;

(J) Each parent's involvement, or lack thereof, in the child's educational, social, and extracurricular activities;

(K) Each parent's employment schedule and the related flexibility or limitations, if any, of a parent to care for the child;

(L) The home, school, and community record and history of the child, as well as any health or educational special needs of the child;

(M) Each parent's past performance and relative abilities for future performance of parenting responsibilities;

(N) The willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent, consistent with the best interest of the child;

(O) Any recommendation by a court appointed custody evaluator or guardian ad litem;

(P) Any evidence of family violence or sexual, mental, or physical child abuse or criminal history of either parent; and

(Q) Any evidence of substance abuse by either parent.

(4) In addition to other factors that a judge may consider in a proceeding in which the custody of a child or visitation or parenting time by a parent is at issue and in which the judge has made a finding of family violence:

(A) The judge shall consider as primary the safety and well-being of the child and of the parent who is the victim of family violence;

(B) The judge shall consider the perpetrator's history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault to another person;

(C) If a parent is absent or relocates because of an act of domestic violence by the other parent, such absence or relocation for a reasonable period of time in the circumstances shall not be deemed an abandonment of the child for the purposes of custody determination; and

(D) The judge shall not refuse to consider relevant or otherwise admissible evidence of acts of family violence merely because there has been no previous finding of family violence. The judge may, in addition to other appropriate actions, order supervised visitation or parenting time pursuant to Code Section 19-9-7.

(5) In all custody cases in which the child has reached the age of 14 years, the child shall have the right to select the parent with whom he or she desires to live. The child's selection for purposes of custody shall be presumptive unless the parent so selected is determined not to be in the best interests of the child. The parental selection by a child who has reached the age of 14 may, in and of itself, constitute a material change of condition or circumstance in any action seeking a modification or change in the custody of that child; provided, however, that such selection may only be made once within a period of two years from the date of the previous selection and the best interests of the child standard shall apply.

(6) In all custody cases in which the child has reached the age of 11 but not 14 years, the judge shall consider the desires and educational needs of the child in determining which parent shall have custody. The judge shall have complete discretion in making this determination, and the child's desires shall not be controlling. The judge shall further have broad discretion as to how the child's desires are to be considered, including through the report of a guardian ad litem. The best interests of the child standard shall be controlling. The parental selection of a child who has reached the age of 11 but not 14 years shall not, in and of itself, constitute a material change of condition or circumstance in any action seeking a modification or change in the custody of that child. The judge may issue an order granting temporary custody to the selected parent for a trial period not to exceed six months regarding the custody of a child who has reached the age of 11 but not 14 years where the judge hearing the case determines such a temporary order is appropriate.

(7) The judge is authorized to order a psychological custody evaluation of the family or an independent medical evaluation. In addition to the privilege afforded a witness, neither a court appointed custody evaluator nor a court appointed guardian ad litem shall be subject to civil liability resulting from any act or failure to act in the performance of his or her duties unless such act or failure to act was in bad faith.

(8) If requested by any party on or before the close of evidence in a contested hearing, the permanent court order awarding child custody shall set forth specific findings of fact as to the basis for the judge's decision in making an award of custody including any relevant factor relied upon by the judge as set forth in paragraph (3) of this subsection. Such order shall set forth in detail why the court awarded custody in the manner set forth in the order and, if joint legal custody is awarded, a manner in which final decision making on matters affecting the child's education, health, extracurricular activities, religion, and any other important matter shall be decided. Such order shall be filed within 30 days of the final hearing in the custody case, unless extended by order of the judge with the agreement of the parties.

(b) In any case in which a judgment awarding the custody of a child has been entered, on the motion of any party or on the motion of the judge, that portion of the judgment effecting visitation rights between the parties and their child or parenting time may be subject to review and modification or alteration without the necessity of any showing of a change in any material conditions and circumstances of either party or the child, provided that the review and modification or alteration shall not be had more often than once in each two-year period following the date of entry of the judgment. However, this subsection shall not limit or restrict the power of the judge to enter a judgment relating to the custody of a child in any new proceeding based upon a showing of a change in any material conditions or circumstances of a party or the child. A military parent's absences caused by the performance of his or her deployments, or the potential for future deployments, shall not be the sole factor considered in supporting a claim of any change in material conditions or circumstances of either party or the child; provided, however, that the court may consider evidence of the effect of a deployment in assessing a claim of any change in material conditions or circumstances of either party or the child.

(c) In the event of any conflict between this Code section and any provision of Article 3 of this chapter, Article 3 shall apply.

(d) It is the express policy of this state to encourage that a child has continuing contact with parents and grandparents who have shown the ability to act in the best interest of the child and to encourage parents

to share in the rights and responsibilities of raising their child after such parents have separated or dissolved their marriage or relationship.

(e) Upon the filing of an action for a change of child custody, the judge may in his or her discretion change the terms of custody on a temporary basis pending final judgment on such issue. Any such award of temporary custody shall not constitute an adjudication of the rights of the parties.

(f)(1) In any case in which a judgment awarding the custody of a child has been entered, the court entering such judgment shall retain jurisdiction of the case for the purpose of ordering the custodial parent to notify the court of any changes in the residence of the child.

(2) In any case in which visitation rights or parenting time has been provided to the noncustodial parent and the court orders that the custodial parent provide notice of a change in address of the place for pickup and delivery of the child for visitation or parenting time, the custodial parent shall notify the noncustodial parent, in writing, of any change in such address. Such written notification shall provide a street address or other description of the new location for pickup and delivery so that the noncustodial parent may exercise such parent's visitation rights or parenting time.

(3) Except where otherwise provided by court order, in any case under this subsection in which a parent changes his or her residence, he or she must give notification of such change to the other parent and, if the parent changing residence is the custodial parent, to any other person granted visitation rights or parenting time under this title or a court order. Such notification shall be given at least 30 days prior to the anticipated change of residence and shall include the full address of the new residence.

(g) Except as provided in Code Section 19-6-2, and in addition to the attorney's fee provisions contained in Code Section 19-6-15, the judge may order reasonable attorney's fees and expenses of litigation, experts, and the child's guardian ad litem and other costs of the child custody action and pretrial proceedings to be paid by the parties in proportions and at times determined by the judge. Attorney's fees may be awarded at both the temporary hearing and the final hearing. A final judgment shall include the amount granted, whether the grant is in full or on account, which may be enforced by attachment for contempt of court or by writ of fieri facias, whether the parties subsequently reconcile or not. An attorney may bring an action in his or her own name to enforce a grant of attorney's fees made pursuant to this subsection.

(h) In addition to filing requirements contained in Code Section 19-6-15, upon the conclusion of any proceeding under this article, the

domestic relations final disposition form as set forth in Code Section 9-11-133 shall be filed.

(i) Notwithstanding other provisions of this article, whenever a military parent is deployed, the following shall apply:

(1) A court shall not enter a final order modifying parental rights and responsibilities under an existing parenting plan earlier than 90 days after the deployment ends, unless such modification is agreed to by the deployed parent;

(2) Upon a petition to establish or modify an existing parenting plan being filed by a deploying parent or nondeploying parent, the court shall enter a temporary modification order for the parenting plan to ensure contact with the child during the period of deployment when:

(A) A military parent receives formal notice from military leadership that he or she will deploy in the near future, and such parent has primary physical custody, joint physical custody, or sole physical custody of a child, or otherwise has parenting time with a child under an existing parenting plan; and

(B) The deployment will have a material effect upon a deploying parent's ability to exercise parental rights and responsibilities toward his or her child either in the existing relationship with the other parent or under an existing parenting plan;

(3) Petitions for temporary modification of an existing parenting plan because of a deployment shall be heard by the court as expeditiously as possible and shall be a priority on the court's calendar;

(4)(A) All temporary modification orders for parenting plans shall include a reasonable and specific transition schedule to facilitate a return to the predeployment parenting plan over the shortest reasonable time period after the deployment ends, based upon the child's best interest.

(B) Unless the court determines that it would not be in the child's best interest, a temporary modification order for a parenting plan shall set a date certain for the anticipated end of the deployment and the start of the transition period back to the predeployment parenting plan. If a deployment is extended, the temporary modification order for a parenting plan shall remain in effect, and the transition schedule shall take effect at the end of the extension of the deployment. Failure of the nondeploying parent to notify the court in accordance with this paragraph shall not prejudice the deploying parent's right to return to the predeployment parenting plan once the temporary modification

order for a parenting plan expires as provided in subparagraph (C) of this paragraph.

(C) A temporary modification order for a parenting plan shall expire upon the completion of the transition period and the predeployment parenting plan shall establish the rights and responsibilities between parents for the child;

(5) Upon a petition to modify an existing parenting plan being filed by a deploying parent and upon a finding that it serves the best interest of the child, the court may delegate for the duration of the deployment any portion of such deploying parent's parenting time with the child to anyone in his or her extended family, including but not limited to an immediate family member, a person with whom the deploying parent cohabits, or another person having a close and substantial relationship to the child. Such delegated parenting time shall not create any separate rights to such person once the period of deployment has ended;

(6) If the court finds it to be in the child's best interest, a temporary modification order for a parenting plan issued under this subsection may require any of the following:

(A) The nondeploying parent make the child reasonably available to the deploying parent to exercise his or her parenting time immediately before and after the deploying parent departs for deployment and whenever the deploying parent returns to or from leave or furlough from his or her deployment;

(B) The nondeploying parent facilitate opportunities for the deployed parent to have regular and continuing contact with his or her child by telephone, e-mail exchanges, virtual video parenting time through the Internet, or any other similar means;

(C) The nondeploying parent not interfere with the delivery of correspondence or packages between the deployed parent and child of such parent; and

(D) The deploying parent provide timely information regarding his or her leave and departure schedule to the nondeploying parent;

(7) Because actual leave from a deployment and departure dates for a deployment are subject to change with little notice due to military necessity, such changes shall not be used by the nondeploying parent to prevent contact between the deployed parent and his or her child;

(8) A court order temporarily modifying an existing parenting plan or other order governing parent-child rights and responsibilities shall

specify when a deployment is the basis for such order and it shall be entered by the court only as a temporary modification order or interlocutory order;

(9) A relocation by a nondeploying parent during a period of a deployed parent's absence and occurring during the period of a temporary modification order for a parenting plan shall not act to terminate the exclusive and continuing jurisdiction of the court for purposes of later determining custody or parenting time under this chapter;

(10) A court order temporarily modifying an existing parenting plan or other order shall require the nondeploying parent to provide the court and the deploying parent with not less than 30 days' advance written notice of any intended change of residence address, telephone numbers, or e-mail address;

(11) Upon a deployed parent's final return from deployment, either parent may file a petition to modify the temporary modification order for a parenting plan on the grounds that compliance with such order will result in immediate danger or substantial harm to the child, and may further request that the court issue an ex parte order. The deployed parent may file such a petition prior to his or her return. Such petition shall be accompanied by an affidavit in support of the requested order. Upon a finding of immediate danger or substantial harm to the child based on the facts set forth in the affidavit, the court may issue an ex parte order modifying the temporary parenting plan or other parent-child contact in order to prevent immediate danger or substantial harm to the child. If the court issues an ex parte order, the court shall set the matter for hearing within ten days from the issuance of the ex parte order;

(12) Nothing in this subsection shall preclude either party from filing a petition for permanent modification of an existing parenting plan under subsection (b) of this Code section; provided, however, that the court shall not conduct a final hearing on such petition until at least 90 days after the final return of the deploying parent. There shall exist a presumption favoring the predeployment parenting plan or custody order as one that still serves the best interest of the child, and the party seeking to permanently modify such plan or order shall have the burden to prove that it no longer serves the best interest of the child;

(13) When the deployment of a military parent has a material effect upon his or her ability to appear in person at a scheduled hearing, then upon request by the deploying parent and provided reasonable advance notice is given to other interested parties, the court may allow a deployed parent to present testimony and other

evidence by electronic means for any matter considered by the court under this subsection. For purposes of this paragraph, the term “electronic means” shall include, but not be limited to, communications by telephone, video teleconference, Internet connection, or electronically stored affidavits or documents sent from the deployment location or elsewhere;

(14)(A) When deployment of a military parent appears imminent and there is no existing parenting plan or other order setting forth the parent’s rights and responsibilities, then upon a petition filed by either parent the court shall:

(i) Expedite a hearing to establish a temporary parenting plan;

(ii) Require that the deploying parent shall have continued access to the child, provided that such contact is in the child’s best interest;

(iii) Ensure the disclosure of financial information pertaining to both parties;

(iv) Determine the child support responsibilities under Code Section 19-6-15 of both parents during the deployment; and

(v) Determine the child’s best interest and consider delegating to any third parties with close contacts to the child any reasonable parenting time during the deployment. In deciding such request the court shall consider the reasonable requests of the deployed parent.

(B) Any pleading filed to establish a parenting plan or child support order under this paragraph shall be identified at the time of filing by stating in the text of the pleading the specific facts related to the deployment and by referencing this paragraph and subsection of this Code section;

(15) When an impending deployment precludes court expedited adjudication before deployment, the court may agree to allow the parties to arbitrate any issues as allowed under Code Section 19-9-1.1, or order the parties to mediation under any court established alternative dispute resolution program. For purposes of arbitration or mediation, each party shall be under a duty to provide to the other party information relevant to any parenting plan or support issues pertaining to the children or the parties;

(16) Each military parent shall be under a continuing duty to provide written notice to the nondeploying parent within 14 days of the military parent’s receipt of oral or written orders requiring deployment or any other absences due to military service that will

impact the military parent’s ability to exercise his or her parenting time with a child. If deployment orders do not allow for 14 days’ advance notice, then the military parent shall provide written notice to the other parent immediately upon receiving such notice; and

(17) A military parent shall ensure that any military family care plan that he or she has filed with his or her commander is consistent with any existing court orders for his or her child. In all instances any court order will be the first course of action for the care of a child during the absence of a military parent, and the military family care plan will be the alternative plan if the nondeploying parent either refuses to provide care for the child or acknowledges an inability to provide reasonable care for the child. A military parent shall not be considered in contempt of any court order or parenting plan when he or she in good faith implements his or her military family care plan based upon the refusal or claimed inability of a nondeploying parent to provide reasonable care for a child during a deployment. (Ga. L. 1913, p. 110, § 1; Code 1933, § 74-107; Ga. L. 1957, p. 412, § 2; Ga. L. 1962, p. 713, § 2; Ga. L. 1976, p. 1050, § 3; Ga. L. 1978, p. 258, § 3; Ga. L. 1982, p. 3, § 19; Ga. L. 1984, p. 22, § 19; Ga. L. 1986, p. 1000, § 2; Ga. L. 1990, p. 1423, § 1; Ga. L. 1991, p. 1389, § 1; Ga. L. 1993, p. 1983, § 1; Ga. L. 1995, p. 863, § 6; Ga. L. 1999, p. 329, § 4; Ga. L. 2000, p. 1292, § 2; Ga. L. 2004, p. 780, § 3; Ga. L. 2007, p. 554, § 5/HB 369; Ga. L. 2011, p. 274, § 3/SB 112.)

The 2011 amendment, effective May 11, 2011, added the last sentence in subsection (b) and added subsection (i).

Editor’s notes. — Ga. L. 2011, p. 274, § 1, not codified by the General Assembly, provides that: “This Act shall be known

and may be cited as the ‘Military Parents Rights Act.’”

Law reviews. — For annual survey of law on domestic relations, see 62 Mercer L. Rev. 105 (2010).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

AWARD OF CUSTODY

- 1. IN GENERAL
- 2. CHILD’S BEST INTERESTS AND WELFARE
- 3. APPLICATION

CHANGE OF CUSTODY

- 1. IN GENERAL
- 2. APPLICATION

VISITATION RIGHTS

General Consideration

Consideration of factors in adoption proceeding. — Trial court did not abuse the court’s discretion by considering the factors listed in O.C.G.A. § 19-9-3 in a

petition for adoption filed by a child’s paternal grandmother and paternal step-grandfather, although the court recognized that the factors were listed in the statute governing custody between par-

General Consideration (Cont'd)

ents because the child's maternal grand-mother posed no objection when the trial court announced the court's decision in open court and noted specifically that the court utilized O.C.G.A. § 19-9-3 in the court's analysis. *Barr v. Gregor*, 316 Ga. App. 269, 728 S.E.2d 868 (2012).

Custody evaluation properly ordered in visitation dispute. — It was not error for a trial court to order a custody evaluation in a visitation dispute because: (1) O.C.G.A. § 19-9-22(1) included visitation in the definition of "custody"; and (2) O.C.G.A. § 19-9-3(a)(7) authorized the court to order an evaluation. *Gottschalk v. Gottschalk*, 311 Ga. App. 304, 715 S.E.2d 715 (2011).

Parties financial condition not relevant to award of attorney's fees. — Trial court did not err in awarding a mother attorney's fees after granting the mother's petition to modify custody because the mother submitted a letter brief expressly seeking an award of attorney's fees pursuant to O.C.G.A. § 19-9-3(g); subsection (g) of § 19-9-3 does not require a trial court to consider the parties' financial circumstances in making the grant of attorney's fees. Therefore, to the extent *Harris v. Williams*, 304 Ga. App. 390 (2010) holds that O.C.G.A. § 19-9-3(g) does not authorize an award of attorney's fees in an action seeking modification of child custody, the case is overruled. *Viskup v. Visкуп*, 291 Ga. 103, 727 S.E.2d 97 (2012).

Allocation of attorney fee award not required. — Full amount of attorney's fees award of \$35,000 to a father in a child custody dispute was justified by the trial court's findings under either O.C.G.A. § 9-15-14 or O.C.G.A. § 19-9-3(g); therefore, the trial court was not required to allocate the amount the court was awarding under each statute. *Taylor v. Taylor*, 293 Ga. 615, 748 S.E.2d 873 (2013).

Cited in *Harris v. Williams*, 304 Ga. App. 390, 696 S.E.2d 131 (2010); *Avren v. Garten*, 289 Ga. 186, 710 S.E.2d 130 (2011); *Caldwell v. Meadows*, 312 Ga. App. 70, 717 S.E.2d 668 (2011); *El v. Martin*,

317 Ga. App. 676, 732 S.E.2d 539 (2012); *Lacy v. Lacy*, 320 Ga. App. 739, 740 S.E.2d 695 (2013).

Award of Custody**1. In General**

Trial court did not abuse the court's discretion, etc.

As a trial court did not base the court's custody decision in the parties' divorce action solely on their postnuptial reconciliation agreement pursuant to O.C.G.A. § 19-9-5(b), but instead, the court found that the custody arrangement encompassed within the agreement was in the children's best interests pursuant to the factors under O.C.G.A. § 19-9-3(a)(3)(A-Q), there was no abuse of discretion in the custody award. *Spurlin v. Spurlin*, 289 Ga. 818, 716 S.E.2d 209 (2011).

2. Child's Best Interests and Welfare

Custody dispute involving orphaned children. — In a custody dispute involving children orphaned by the murder-suicide of their parents, a trial court did not err by awarding custody of the children to the paternal grandmother over the petition of an aunt because the aunt was involved in a divorce proceeding, had a precarious financial situation, and otherwise was unable to show that she could support her own child let alone that of her niece and nephew; plus, the aunt made representations to the niece and nephew that they would be living with her permanently, knowing that the custody matter had not yet been decided. *Stone-Crosby v. Mickens-Cook*, 318 Ga. App. 313, 733 S.E.2d 842 (2012).

Considerations relevant in determining best interests of child.

There was evidence to support the trial court's determination that a move to Utah would be disruptive to the child, including evidence that the child had lived in Georgia most of the child's life, had relatives in Georgia, and had been unhappy on trips to Utah; such disruption was a permitted factor in considering the child's best interests as required by O.C.G.A. § 19-9-3. *Curtice v. Harwell*, 313 Ga. App. 263, 721 S.E.2d 200 (2011).

Custody award to husband justified. — Trial court did not err in awarding primary physical custody of the child to the husband based on best interest of the child because the husband's employment schedule enabled the husband to devote more time to the child, the child was better behaved when the child was reared by the husband, and the husband provided more nutritious meals for the child. *Rose v. Rose*, 294 Ga. 719, 755 S.E.2d 737 (2014).

3. Application

Adopting parent on equal footing as biological. — Trial court did not err in awarding primary physical custody of the couple's biological child to the wife as the court's determination that splitting the siblings would cause emotional harm to both children was sufficient to overcome the statutory presumption in favor of the husband with respect to custody of the older child, who was the biological child of the husband and adopted by the wife. *Hastings v. Hastings*, 291 Ga. 782, 732 S.E.2d 272 (2012).

Change of Custody

1. In General

Remand of attorney fee award required. — In a child custody modification proceeding, the trial court erred by awarding attorney fees to the father in the amount of \$4,000 under O.C.G.A. § 19-9-3 as the award was not supported by the record since the trial court did not explain the statutory basis for the award and did not enter any findings necessary to support the award as required by O.C.G.A. § 19-6-15(k)(5). *Kuehn v. Key*, 325 Ga. App. 512, 754 S.E.2d 103 (2014).

Nondischargeability of fee awards in bankruptcy. — Awards in the amount of \$2,474 and \$11,865 which a Georgia court made under O.C.G.A. § 19-9-3 to a Chapter 7 debtor's ex-husband and a guardian ad litem, respectively, in a change of custody proceeding the ex-husband filed against the debtor, were nondischargeable under 11 U.S.C. § 523 because they were "in the nature of support" for the child. *Rackley v. Rackley* (In

re *Rackley*), 502 B.R. 615 (Bankr. N.D. Ga. 2013).

2. Application

Parent's surrender of custody is change in condition, etc.

Trial court did not err in granting a father's petition for a change of custody and awarding the father primary physical custody of his child because the mother voluntarily surrendered physical custody and control over the child to the maternal grandmother, resulting in a material change in condition; after the entry of a consent order modifying the father's visitation rights, the grandmother limited some of the father's visitation with the child, the mother and grandmother exhibited an ongoing pattern of excluding the father from important medical decisions affecting the child, and the mother and grandmother failed to notify the father whenever the mother executed a power of attorney in loco parentis in favor of the grandmother. *Shotwell v. Filip*, 314 Ga. App. 93, 722 S.E.2d 906 (2012).

Denial of visitation supported by evidence. — Father was properly denied visitation when there was evidence that the father had not seen the child in 18 months, the father had been arrested twice for operating a vehicle while under the influence of alcohol or drugs, and had been cited for failure to maintain a lane while driving, and the father failed to demonstrate that the child was a priority in the father's life. *Bishop v. Baumgartner*, 292 Ga. 460, 738 S.E.2d 604 (2013).

Change of custody held in child's best interest. — Trial court committed no error in finding that it would be in the child's best interest to live with the father rather than the maternal grandmother because the father presented evidence from a licensed psychologist who opined that the father was a fit and qualified parent to have primary physical custody of the child and would be able to meet the needs of the child in adjusting to a new home; the father had been gainfully employed without a lapse of employment until April 2010 and had been applying for jobs with potential employers, and there was some evidence that the father's wife

Change of Custody (Cont'd)

2. Application (Cont'd)

maintained suitable employment and made adequate income for the family to provide for the child's necessary basic care. *Shotwell v. Filip*, 314 Ga. App. 93, 722 S.E.2d 906 (2012).

Evidence held ample to justify change.

Trial court did not err in granting a mother's petition for modification of custody and awarding the mother permanent primary physical custody of the parties' child because the trial court's findings that the mother's circumstances had improved dramatically since the divorce and that the father had been held in contempt of court for violation of the visitation order and had taken steps to undermine the mother were supported by the evidence. *Viskup v. Viskup*, 291 Ga. 103, 727 S.E.2d 97 (2012).

Trial court did not abuse the court's discretion by denying a mother's motion for a new trial with regard to an order changing custody of the parties' one minor child to the father because the mother failed to produce newly discovered evidence, repeatedly interfered with the father's visitation, and the record established that the mother obtained a modification in another county under false pretenses, thus, the mother's credibility had been completely impeached. *Fifadara v. Goyal*, 318 Ga. App. 196, 733 S.E.2d 478 (2012).

Sole legal custody was properly awarded to the father of two young children, given that the mother shared her home with her boyfriend, encouraged her child to lie about vacationing with the boyfriend, made derogatory remarks about the father in the children's presence, and drank alcohol in the children's presence in violation of her probation. *Taylor v. Taylor*, 293 Ga. 615, 748 S.E.2d 873 (2013).

Trial court did not abuse the court's discretion by modifying child custody by awarding the father primary custody under O.C.G.A. § 19-9-3(a)(3)(F), (O), (P) and (a)(4)(A) and (B) because the change of custody ruling was supported under the any evidence standard based on testimony

from the father, paternal grandmother, and the guardian ad litem's recommendation, who recommended the change in custody to the father as well. *Kuehn v. Key*, 325 Ga. App. 512, 754 S.E.2d 103 (2014).

Evidence held insufficient to justify change.

Trial court did not err in denying a mother's petition for modification of custody because the court applied the correct legal standard when the court concluded that it was not in the children's best interest to modify custody absent a material change in circumstance affecting their well-being; the mother failed to demonstrate that the house where the children lived was inadequate for their needs, that the children's welfare was materially affected by the living arrangements, or that the father's late shifts at work materially affected the children's welfare, and the father had an extensive family network available to the father. *Harris v. Williams*, 304 Ga. App. 390, 696 S.E.2d 131 (2010), overruled on other grounds, *Viskup v. Viskup*, 291 Ga. 103, 727 S.E.2d 97 (2012).

Visitation Rights

Portion of custody award concerning visitation may be modified.

Plaintiff ex-husband was correct that the due process clause of the Fourteenth Amendment protected a parent's fundamental right to participate in the care, custody, and management of their children, but he failed to show that O.C.G.A. § 19-9-3 violated his substantive due process rights because neither the U.S. Supreme Court nor the U.S. Court of Appeals for the Eleventh Circuit had held that a state had to impose a specific standard of proof for modification of visitation rights. *Gottschalk v. Gottschalk*, No. 10-11979, 2011 U.S. App. LEXIS 12222 (11th Cir. June 16, 2011) (Unpublished).

Elimination of right of first refusal. — Trial court was authorized to eliminate the right of first refusal based on the court's express findings that the provision was not in the child's best interest. *Horn v. Shepherd*, 292 Ga. 14, 732 S.E.2d 427 (2012).

Court modification of visitation rights.

In a custody dispute, a trial court did

not abuse the court's discretion in modifying a father's visitation rights, O.C.G.A. § 19-9-3(b), by eliminating custody and parenting time because the father's attempted voluntary relinquishment of visitation and other parental rights constituted a material change in condition. *Smith v. Curtis*, 316 Ga. App. 890, 730 S.E.2d 604 (2012).

Trial court did not abuse the court's discretion in denying the father's motion to modify visitation because there was substantial evidence of the father and the father's wife's continued failure to comply with the court's orders pertaining to their harassment and degradation of the mother despite the harm and detriment the degradation caused the child and the father refused to work with the child's psychologist or pay for another qualified psychologist in order to obtain additional or unsupervised visitation. *Vines v. Vines*, 292 Ga. 550, 739 S.E.2d 374 (2013).

Modification by motion.

Trial court did not err in modifying a visitation schedule because the father was afforded more than one opportunity to respond to the mother's motion for modification; the father waived any challenge to venue by failing to ever object to venue, or otherwise raise the issue, in the trial court. *Cross v. Ivester*, 315 Ga. App. 760, 728 S.E.2d 299 (2012).

Modification of visitation rights permissible in contempt proceeding without advance notice. — Modifica-

tion to visitation could be made in a contempt proceeding as provided in O.C.G.A. § 19-9-3(b), and the wife was not required to be given notice and time to prepare an adequate response to a motion to modify child visitation because such notice was not required by § 19-9-3(b). *Weeks v. Weeks*, 324 Ga. App. 785, 751 S.E.2d 575 (2013).

Change in visitation rights is not dependent upon changed conditions.

It was not error for a trial court to modify a father's visitation without finding a material change in circumstances because O.C.G.A. § 19-9-3(b) specifically allowed a modification in visitation without such a finding. *Gottschalk v. Gottschalk*, 311 Ga. App. 304, 715 S.E.2d 715 (2011).

Increased visitation did not amount to de facto change of custody.

— Increased visitation to a former wife did not amount to a de facto change of custody because the increased visitation did not exceed the time of custody allowed to the former husband; also, the provision allowing the wife to make decisions regarding the children's day-to-day care when the children were in the mother's custody did not amount to a de facto change in custody. *Blackmore v. Blackmore*, 311 Ga. App. 885, 717 S.E.2d 504 (2011).

19-9-5. Custody agreements; ratification; supplementation.

JUDICIAL DECISIONS

Consideration of postnuptial reconciliation agreement. — As a trial court did not base the court's custody decision in the parties' divorce action solely on their postnuptial reconciliation agreement pursuant to O.C.G.A. § 19-9-5(b), but instead the court found that the custody arrangement encompassed within the agreement was in

the children's best interests pursuant to the factors under O.C.G.A. § 19-9-3(a)(3)(A)-(Q), there was no abuse of discretion in the custody award. *Spurlin v. Spurlin*, 289 Ga. 818, 716 S.E.2d 209 (2011).

19-9-6. Definitions.

As used in this article, the term:

(1) “Armed forces” means the national guard and the reserve components of the armed forces, the United States army, navy, marine corps, coast guard, and air force.

(2) “Deploy” or “deployment” means military service in compliance with the military orders received by a member of the armed forces to report for combat operations, contingency operations, peacekeeping operations, a remote tour of duty, temporary duty, or other such military service for which a parent is required to report unaccompanied by family members. Deployment shall include the period during which a military parent remains subject to deployment orders and remains deployed on account of sickness, wounds, leave, or other lawful cause. Such term shall include mobilization.

(3) “Deploying parent” or “deployed parent” means a military parent who has been formally notified by military leadership that he or she will deploy or mobilize or who is currently deployed or mobilized.

(4) “Joint custody” means joint legal custody, joint physical custody, or both joint legal custody and joint physical custody. In making an order for joint custody, the judge may order joint legal custody without ordering joint physical custody.

(5) “Joint legal custody” means both parents have equal rights and responsibilities for major decisions concerning the child, including the child’s education, health care, extracurricular activities, and religious training; provided, however, that the judge may designate one parent to have sole power to make certain decisions while both parents retain equal rights and responsibilities for other decisions.

(6) “Joint physical custody” means that physical custody is shared by the parents in such a way as to assure the child of substantially equal time and contact with both parents.

(7) “Military family care plan” means a plan that is periodically reviewed by a military parent’s commander that provides for care of a military parent’s child whenever his or her military duties prevent such parent from providing care to his or her child and ensures that a military parent has made adequate and reasonable arrangements to provide for the needs and supervision of his or her child whenever a nondeploying parent is unable or unavailable to provide care in the military parent’s absence.

(8) “Military parent” means a member of the armed forces who is a legal parent, adoptive parent, or guardian of a child under the age of 18, whose parental rights are established either by operation of law or the process of legitimation, and who has not had his or her parental rights terminated by a court of competent jurisdiction.

(9) “Mobilization” or “mobilize” means the call-up of the national guard and the reserve components of the armed forces to extended active duty service. Such term shall not include National Guard or Reserves component annual training, inactive duty days, drill weekends, or state active duty performed within the boundaries this state.

(10) “Nondeploying parent” means:

(A) A parent who is not a member of the armed forces; or

(B) A military parent who is currently not also a deploying parent.

(11) “Sole custody” means a person, including, but not limited to, a parent, has been awarded permanent custody of a child by a court order. Unless otherwise provided by court order, the person awarded sole custody of a child shall have the rights and responsibilities for major decisions concerning the child, including the child’s education, health care, extracurricular activities, and religious training, and the noncustodial parent shall have the right to visitation or parenting time. A person who has not been awarded custody of a child by court order shall not be considered as the sole legal custodian while exercising visitation rights or parenting time.

(12) “State active duty” means the call-up by a governor for the performance of any military duty while serving within the boundaries of that state.

(13) “Temporary duty” means the assignment of a military parent to a geographic location outside of this state for a limited period of time to accomplish training or to assist in the performance of a military mission. (Code 1981, § 19-9-6, enacted by Ga. L. 1990, p. 1423, § 2; Ga. L. 2007, p. 554, § 5/HB 369; Ga. L. 2011, p. 274, § 4/SB 112.)

The 2011 amendment, effective May 11, 2011, added present paragraphs (1) through (3), (7) through (10), (12), and (13); and redesignated former paragraphs (1) through (4) as present paragraphs (4) through (6) and (11), respectively.

Editor’s notes. — Ga. L. 2011, p. 274, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘Military Parents Rights Act.’”

JUDICIAL DECISIONS

Joint physical custody proper. — Trial court did not abuse the court’s discretion in awarding joint physical custody of a child because the trial court’s order found both the husband and the wife to be fit and proper, acknowledging that each parent had strengths and weaknesses; the trial court heard testimony concerning the

husband’s relationship with his child, the financial payments he made while the child and the wife were living with the wife’s parents in another state, and the difficulty of visiting the infant when the child and the wife were living with the wife’s parents. Furthermore, the order was made with the best interests of the

child in mind because there was evidence that the child had a good relationship with each parent and that each parent had adequate housing for the child and could provide what the child needed; the trial court expressly found it was in the child's best interests that the husband and wife share joint physical custody on alternating weeks, and the Social Service Coordinator assigned to the case recommended to the trial court that the husband and wife share evenly-divided joint physical custody of the child. *Willis v. Willis*, 288 Ga. 577, 707 S.E.2d 344 (2010).

Modification of joint custody agreement. — In granting the mother's peti-

tion to change custody, the record contained ample evidence from which the trial court could determine that the father could not provide a stable home because he took the child from Georgia to Maryland in violation of the joint custody agreement without telling the mother, he suffered from bipolar personality disorder, and was hospitalized for suicidal ideation. The trial court made the court's custody determination based upon the best interest of the child. *Roberts v. Kinsey*, 308 Ga. App. 675, 708 S.E.2d 600 (2011).

ARTICLE 2

CHILD CUSTODY INTRASTATE JURISDICTION ACT

19-9-20. Short title.

JUDICIAL DECISIONS

Cited in *Oglesby v. Deal*, 311 Ga. App. 622, 716 S.E.2d 749 (2011).

19-9-22. Definitions.

JUDICIAL DECISIONS

Change in visitation is form of change in child custody.

It was not error for a trial court to order a custody evaluation in a visitation dispute because: (1) O.C.G.A. § 19-9-22(1) included visitation in the definition of "custody"; and (2) O.C.G.A. § 19-9-3(a)(7)

authorized the court to order an evaluation. *Gottschalk v. Gottschalk*, 311 Ga. App. 304, 715 S.E.2d 715 (2011).

Cited in *Oglesby v. Deal*, 311 Ga. App. 622, 716 S.E.2d 749 (2011); *Smith v. Curtis*, 316 Ga. App. 890, 730 S.E.2d 604 (2012).

19-9-23. Actions to obtain change of legal custody; how and where brought; use of certain complaints prohibited.

Law reviews. — For annual survey on domestic relations, see 65 *Mercer L. Rev.* 107 (2013).

JUDICIAL DECISIONS

Jurisdiction for modification of divorce decree. — Georgia Court of Appeals finds it necessary in the context of divorce and alimony cases to depart from

the general rule that a contempt action must be brought in the offended court, thus, it now holds that when a superior court other than the superior court ren-

dering the original divorce decree acquires jurisdiction and venue to modify that decree, it likewise possesses the jurisdiction and venue to entertain a counterclaim alleging the plaintiff is in contempt of the original decree. *Colbert v. Colbert*, 321 Ga. App. 841, 743 S.E.2d 505 (2013).

Trial court properly acquired jurisdiction to modify a divorce decree, independent of the contemporaneous motion for contempt, because the mother, a nonresident, voluntarily instituted the suit in the jurisdiction of the trial court; therefore, the mother submitted to the court's jurisdiction for all purposes. *Colbert v. Colbert*, 321 Ga. App. 841, 743 S.E.2d 505 (2013).

Venue shown. — Mother's petition for modification of custody was properly filed in and decided by the Superior Court of Cherokee County because there was evidence that supported the superior court's determination that the father was a resident of Cherokee County when the mother filed her modification petition; the father was served at his Cherokee County apartment, and the superior court orally ruled that while the father had the intent to return to another county, the father was a resident of Cherokee County until the father's physical presence changed. *Viskup v. Viskup*, 291 Ga. 103, 727 S.E.2d 97 (2012).

Motion filed in proper county. — Motion for a change in custody was not filed in the wrong county as the wife originally lived in the county in which the action was initiated, the wife moved to another county while the case was pending, and the wife waived any personal jurisdiction and venue defenses by entering into a consent order regarding custody and waiting many months before asserting the defense. *Andersen v. Farrington*, 291 Ga. 775, 731 S.E.2d 351 (2012).

Counterclaim for change of custody.

Custody award was affirmed because even if the father's decision to file a petition for change of custody was predicated on the mother's successful petition for habeas corpus, the father's petition was not a forbidden "response" to the mother's petition for purposes of O.C.G.A. § 19-9-23(c)(1). *Alberti v. Alberti*, 320 Ga. App. 724, 741 S.E.2d 179 (2013).

Counterclaim seeking a change of custody in an action brought by the custodial parent in the county of the noncustodial parent's residence is improper because it is not a separate action and it is not brought in the county of the custodial parent's residence. The Supreme Court of Georgia has explained that O.C.G.A. § 19-9-23 has been enacted by the Georgia legislature to curtail the practice of allowing the noncustodial parent to relitigate custody in the noncustodial parent's own jurisdiction. *Colbert v. Colbert*, 321 Ga. App. 841, 743 S.E.2d 505 (2013).

Modification of custody rights in contempt proceeding not authorized.

When the father violated the joint custody agreement incorporated in the divorce decree by taking the child to Maryland and refusing to return the child to Georgia, the trial court entered an ex parte emergency order in the contempt action. Because the trial court issued a final order modifying custody in a separate action as required by O.C.G.A. § 19-9-23, the final order rendered any issues regarding the validity of the temporary order moot. *Roberts v. Kinsey*, 308 Ga. App. 675, 708 S.E.2d 600 (2011).

Action not separate or in proper county. — Mother's oral motion for change in custody failed to meet the requirements of O.C.G.A. § 19-9-23 in two respects; the mother did not seek a change in custody in a separate action, but rather in response to the father's petition for contempt against the mother, and the mother did not seek a change in custody in the county in which the father lived as required by § 19-9-23(a) and (b). *Hammonds v. Parks*, 319 Ga. App. 792, 735 S.E.2d 801 (2012).

Appeal moot when visitation restored. — In a post-divorce proceeding, the appellate court dismissed a father's appeal of the trial court's rulings with regard to the writ for habeas corpus filed seeking to enforce visitation rights because the appeal was moot since the father's visitation was restored. *Higdon v. Higdon*, 321 Ga. App. 260, 739 S.E.2d 498 (2013).

Cited in *Oglesby v. Deal*, 311 Ga. App. 622, 716 S.E.2d 749 (2011).

19-9-24. Actions by physical or legal custodian not permitted in certain instances.

JUDICIAL DECISIONS

Dismissal of claims following withholding of visitation. — Having found at a hearing that a custodial parent had withheld visitation, a trial court did not err when, pursuant to O.C.G.A. § 19-9-24(b), the court dismissed the contempt, visitation, and custody portions of

the custodial parent’s petition and, consequently, did not permit the custodial parent to present evidence on the merits of the custodial parent’s dismissed claims. *Avren v. Garten*, 289 Ga. 186, 710 S.E.2d 130 (2011).

ARTICLE 3

UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

PART 1

GENERAL PROVISIONS

19-9-40. Short title.

JUDICIAL DECISIONS

No abuse of discretion in declining jurisdiction. — Trial court did not abuse the court’s discretion by declining to exercise jurisdiction in a child custody case under O.C.G.A. § 19-9-67(b) because the children lived in Texas, the witnesses, such as the children’s teachers and health

care providers were in Texas, and the trial court determined that the case could be more expeditiously resolved there. *Odion v. Odion*, 325 Ga. App. 733, 754 S.E.2d 778 (2014).

Cited in *Black v. Black*, 292 Ga. 691, 740 S.E.2d 613 (2013).

RESEARCH REFERENCES

ALR. — Applicability and application of Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) to interna-

tional child custody and support actions, 66 ALR6th 269.

19-9-41. Definitions.

JUDICIAL DECISIONS

“Home state,” for all purposes which former Chapter 9 was designed to govern, did not mean the residence or domicile of the parent having legal custody. Rather, “home state”, for purposes of former § 19-9-43, meant the place where the child lived or had recently lived and where the child would presumably still be living

had the child not been surreptitiously removed therefrom. *Harper v. Landers*, 180 Ga. App. 154, 348 S.E.2d 698 (1986) (decided under former §§ 19-9-42 and 19-9-43).

Trial court erred in dismissing a husband’s divorce complaint on the ground that jurisdiction was properly with the

Italian court because the trial court had jurisdiction to make the initial custody determination under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), O.C.G.A. § 19-9-61(a) and (b), and no other court did since Georgia was the only state, including Italy, that could qualify as the “home state” of the parties’ child pursuant to the UCCJEA, O.C.G.A. § 19-9-41(7), at the time either the Italian custody proceeding or the Georgia proceeding was commenced and at the time the trial court entered the court’s initial child custody order; under the UCCJEA, the jurisdictional inquiry entered into by the Italian court was insufficient because the Italian court undertook no analysis of the home state of the child or of any other factors that could be considered a substitute for such but simply found that the prerequisites for jurisdiction over a divorce action were met. *Bellew v. Larese*, 288 Ga. 495, 706 S.E.2d 78 (2011).

Trial court did not abuse the court’s discretion by denying a wife’s motion to stay the Georgia divorce proceeding commenced by the husband in lieu of the State of New York proceeding the wife filed

because the record showed that the wife and children had lived in Georgia with the husband since 2000 and continued to live in Georgia until sometime after the couple filed their respective petitions for divorce; thus, Georgia was the home state of the children for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act, O.C.G.A. § 19-9-40 et seq., and New York was not. *Black v. Black*, 292 Ga. 691, 740 S.E.2d 613 (2013).

Res judicata did not bar custody petition. — Since a previous visitation order related to the grandparent’s right to visitation, not custody, and the legal issues to be decided varied, the trial court properly determined that *res judicata* did not bar the grandparents’ petition for custody under the Uniform Child Jurisdiction and Custody Act, O.C.G.A. § 19-9-40 et seq.; the Act does not provide that the judgment is conclusive as to all issues which could have been put in issue. *Scott v. Scott*, 311 Ga. App. 726, 716 S.E.2d 809 (2011).

Cited in *Zinkhan v. Bruce*, 305 Ga. App. 510, 699 S.E.2d 833 (2010); *Oglesby v. Deal*, 311 Ga. App. 622, 716 S.E.2d 749 (2011).

19-9-42. Article inapplicable to adoptions or authorizations for emergency care.

JUDICIAL DECISIONS

UCCJEA does not govern adoption proceedings. — Trial court did not err in exercising jurisdiction in a petition for adoption because the Georgia Uniform Child Custody Jurisdiction Enforcement

Act, O.C.G.A. § 19-9-40 et seq., did not govern adoption proceedings. *Barr v. Gregor*, 316 Ga. App. 269, 728 S.E.2d 868 (2012).

19-9-44. Child custody determinations of foreign country.

JUDICIAL DECISIONS

Georgia trial court had jurisdiction. — Trial court erred in dismissing a husband’s divorce complaint on the ground that jurisdiction was properly with the Italian court because the trial court had jurisdiction to make the initial custody determination under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), O.C.G.A.

§ 19-9-61(a) and (b), and no other court did since Georgia was the only state, including Italy, that could qualify as the “home state” of the parties’ child pursuant to the UCCJEA, O.C.G.A. § 19-9-41(7), at the time either the Italian custody proceeding or the Georgia proceeding was commenced and at the time the trial court entered the court’s initial child custody

order; under the UCCJEA, the jurisdictional inquiry entered into by the Italian court was insufficient because the Italian court undertook no analysis of the home state of the child or of any other factors

that could be considered a substitute for such but simply found that the prerequisites for jurisdiction over a divorce action were met. *Bellew v. Larese*, 288 Ga. 495, 706 S.E.2d 78 (2011).

RESEARCH REFERENCES

ALR. — Applicability and application of Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) to interna-

tional child custody and support actions, 66 ALR6th 269.

19-9-45. Binding authority of child custody determination.

Law reviews. — For annual survey on domestic relations law, see 64 Mercer L. Rev. 121 (2012).

JUDICIAL DECISIONS

Res judicata did not bar custody petition. — Since a previous visitation order related to the grandparent's right to visitation, not custody, and the legal issues to be decided varied, the trial court properly determined that res judicata did not bar the grandparents' petition for cus-

tody under the Uniform Child Jurisdiction and Custody Act, O.C.G.A. § 19-9-40 et seq.; the Act does not provide that the judgment is conclusive as to all issues which could have been put in issue. *Scott v. Scott*, 311 Ga. App. 726, 716 S.E.2d 809 (2011).

PART 2

JURISDICTION

19-9-61. Jurisdiction requirements for initial child custody determinations; physical presence alone insufficient.

JUDICIAL DECISIONS

Georgia was child's "home state."

Trial court erred in dismissing a husband's divorce complaint on the ground that jurisdiction was properly with the Italian court because the trial court had jurisdiction to make the initial custody determination under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), O.C.G.A. § 19-9-61(a) and (b), and no other court did since Georgia was the only state, including Italy, that could qualify as the "home state" of the parties' child pursuant to the UCCJEA, O.C.G.A. § 19-9-41(7), at the time either the Italian custody proceeding or the Georgia proceeding was commenced and

at the time the trial court entered the court's initial child custody order; under the UCCJEA, the jurisdictional inquiry entered into by the Italian court was insufficient because the Italian court undertook no analysis of the home state of the child or of any other factors that could be considered a substitute for such but simply found that the prerequisites for jurisdiction over a divorce action were met. *Bellew v. Larese*, 288 Ga. 495, 706 S.E.2d 78 (2011).

Trial court did not abuse the court's discretion by denying a wife's motion to stay the Georgia divorce proceeding commenced by the husband in lieu of the State

of New York proceeding the wife filed because the record showed that the wife and children lived in Georgia with the husband since 2000 and continued to live in Georgia until sometime after the couple filed their respective petitions for divorce; thus, Georgia was the home state of the children for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act, O.C.G.A. § 19-9-40 et seq., and New York was not. *Black v. Black*, 292 Ga. 691, 740 S.E.2d 613 (2013).

Lack of subject matter jurisdiction. — Superior court erred in granting an aunt and uncle custody of minor children because the court lacked subject matter jurisdiction to consider the petition for custody since a probate court had exclusive jurisdiction to issue and revoke letters of testamentary guardianship, and O.C.G.A. § 29-2-4(b) mandated the issuance of letters of testamentary guardianship to the brother of the children’s father without notice and a hearing and without consideration of the children’s best interests; the children’s physical presence in the state was insufficient to confer subject matter jurisdiction over the petition for

custody, as the Uniform Child Custody Jurisdiction and Enforcement Act, O.C.G.A. § 19-9-40 et seq., presumed that a “court” acting under its auspices already had jurisdiction to act as authorized by law. *Zinkhan v. Bruce*, 305 Ga. App. 510, 699 S.E.2d 833 (2010).

Georgia trial court did not have subject matter jurisdiction to modify a Kansas custody determination under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), O.C.G.A. § 19-9-40 et seq., because, while Georgia was the child’s home state under O.C.G.A. § 19-9-61, Georgia failed to satisfy the remaining requirements of O.C.G.A. § 19-9-63 since the Kansas court never made a determination that it no longer had continuing, exclusive jurisdiction over the custody issue or that Georgia provided a more convenient forum than Kansas. *Delgado v. Combs*, 314 Ga. App. 419, 724 S.E.2d 436 (2012), cert. denied, No. S12C1106, 2012 Ga. LEXIS 602 (Ga. 2012).

Cited in *Oglesby v. Deal*, 311 Ga. App. 622, 716 S.E.2d 749 (2011).

RESEARCH REFERENCES

ALR. — Construction and application of Uniform Child Custody Jurisdiction and Enforcement Act’s significant connec-

tion jurisdiction provision, 52 ALR6th 433.

19-9-62. Prerequisites for termination of exclusive, continuing jurisdiction.

JUDICIAL DECISIONS

Court had subject matter jurisdiction. — Under O.C.G.A. § 19-9-62, the juvenile court properly exercised subject matter jurisdiction to terminate the parental rights of the adoptive parents to the child, born in and a citizen of Zambia, but who, at the time of the termination pro-

ceedings, had lived in Fulton County for at least six consecutive months with persons acting as her parents. In the Interest of *E. E. B. W.*, 318 Ga. App. 65, 733 S.E.2d 369 (2012).

Cited in *Oglesby v. Deal*, 311 Ga. App. 622, 716 S.E.2d 749 (2011).

RESEARCH REFERENCES

ALR. — Construction and application of Uniform Child Custody Jurisdiction and Enforcement Act’s significant connec-

tion jurisdiction provision, 52 ALR6th 433.

19-9-63. Prerequisites for modifying custody determination from foreign court.

JUDICIAL DECISIONS

Other state no longer has exclusive, continuing jurisdiction. — In a Georgia action to modify an Alaska child custody determination, the Georgia trial court properly assumed jurisdiction pursuant to O.C.G.A. § 19-9-63 because during a telephone conversation between the Georgia and the Alaska courts, the Alaska court determined that it no longer had exclusive continuing jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act, O.C.G.A. § 19-9-40 et. seq., that Georgia was the home state of the children, and that the Georgia court was the more appropriate forum. *Lopez v. Olson*, 314 Ga. App. 533, 724 S.E.2d 837 (2012).

Lack of subject matter jurisdiction. — Georgia trial court did not have subject matter jurisdiction to modify a Kansas

custody determination under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), O.C.G.A. § 19-9-40 et seq., because, while Georgia was the child's home state under O.C.G.A. § 19-9-61, Georgia failed to satisfy the remaining requirements of O.C.G.A. § 19-9-63 since the Kansas court never made a determination that it no longer had continuing, exclusive jurisdiction over the custody issue or that Georgia provided a more convenient forum than Kansas. Furthermore, although the Georgia court determined that neither the child nor the parents were presently residing in Kansas, the court erred in doing so. *Delgado v. Combs*, 314 Ga. App. 419, 724 S.E.2d 436 (2012), cert. denied, No. S12C1106, 2012 Ga. LEXIS 602 (Ga. 2012).

RESEARCH REFERENCES

ALR. — Construction and application of Uniform Child Custody Jurisdiction and Enforcement Act's significant connec-

tion jurisdiction provision, 52 ALR6th 433.

19-9-64. Temporary emergency jurisdiction; continuing effect; communicating with other courts.

JUDICIAL DECISIONS

Cited in *Delgado v. Combs*, 314 Ga. App. 419, 724 S.E.2d 436 (2012); *Black v. Black*, 292 Ga. 691, 740 S.E.2d 613 (2013).

RESEARCH REFERENCES

ALR. — Construction and application of uniform child custody jurisdiction and

enforcement act's temporary emergency jurisdiction provision, 53 ALR6th 419.

19-9-66. Procedure where proceedings pending in another state.

JUDICIAL DECISIONS

Jurisdiction properly exercised by Georgia court.

Trial court erred in dismissing a husband's divorce complaint on the ground that jurisdiction was properly with the Italian court because the trial court had jurisdiction to make the initial custody determination under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), O.C.G.A. § 19-9-61(a) and (b), and no other court did since Georgia was the only state, including Italy, that could qualify as the "home state" of the parties' child pursuant to the UCCJEA, O.C.G.A. § 19-9-41(7), at the time either the Italian custody proceeding or the Georgia proceeding was commenced and at the time the trial court entered the court's initial child custody order; under the UCCJEA, the jurisdictional inquiry entered into by the Italian court was insufficient because the Italian court undertook no analysis of the home state of the

child or of any other factors that could be considered a substitute for such but simply found that the prerequisites for jurisdiction over a divorce action were met. *Bellew v. Larese*, 288 Ga. 495, 706 S.E.2d 78 (2011).

Trial court did not abuse the court's discretion by denying a wife's motion to stay the Georgia divorce proceeding commenced by the husband in lieu of the State of New York proceeding the wife filed because the record showed that the wife and children had lived in Georgia with the husband since 2000 and continued to live in Georgia until sometime after the couple filed their respective petitions for divorce; thus, Georgia was the home state of the children for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act, O.C.G.A. § 19-9-40 et seq., and New York was not. *Black v. Black*, 292 Ga. 691, 740 S.E.2d 613 (2013).

19-9-67. Finding of inconvenient forum; conditions.

JUDICIAL DECISIONS

Georgia trial court had jurisdiction. — Trial court erred in dismissing a husband's divorce complaint on the ground that jurisdiction was properly with the Italian court because the trial court had jurisdiction to make the initial custody determination under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), O.C.G.A. § 19-9-61(a) and (b), and no other court did since Georgia was the only state, including Italy, that could qualify as the "home state" of the parties' child pursuant to the UCCJEA, O.C.G.A. § 19-9-41(7), at the time either the Italian custody proceeding or the Georgia proceeding was commenced and at the time the trial court entered its initial child custody order; under the UCCJEA, the jurisdictional inquiry entered into by the Italian court was

insufficient because the Italian court undertook no analysis of the home state of the child or of any other factors that could be considered a substitute for such but simply found that the prerequisites for jurisdiction over a divorce action were met. *Bellew v. Larese*, 288 Ga. 495, 706 S.E.2d 78 (2011).

No abuse of discretion in declining jurisdiction. — Trial court did not abuse the court's discretion by declining to exercise jurisdiction in a child custody case under O.C.G.A. § 19-9-67(b) because the children lived in Texas, the witnesses, such as the children's teachers and health care providers were in Texas, and the trial court determined that the case could be more expeditiously resolved there. *Odion v. Odion*, 325 Ga. App. 733, 754 S.E.2d 778 (2014).

19-9-68. Wrongfully obtained jurisdiction; actions to prevent repetition of unjustifiable conduct; expenses.

JUDICIAL DECISIONS

No unjustifiable conduct. — Mother was not entitled to attorney fees pursuant to O.C.G.A. § 19-9-68 since the father never alleged or presented evidence that the mother no longer resided in Kansas, but the Georgia trial court's holding to that effect was due to the court's own

error, and was not based on any alleged unjustifiable conduct by the father. *Delgado v. Combs*, 314 Ga. App. 419, 724 S.E.2d 436 (2012), cert. denied, No. S12C1106, 2012 Ga. LEXIS 602 (Ga. 2012).

PART 3

JURISDICTION AND ENFORCEMENT OF FOREIGN DECREES

19-9-85. Registering foreign custody determinations; requirements of registering court; contesting registration; confirmation of registered order.

JUDICIAL DECISIONS

Registration not a prerequisite to modification. — In a Georgia action to modify an Alaska child custody determination, although the Alaska judgment was not registered, the plain language of

O.C.G.A. §§ 19-9-85 and 19-9-86 did not require that the Alaska custody determination be registered before it was modifiable. *Lopez v. Olson*, 314 Ga. App. 533, 724 S.E.2d 837 (2012).

19-9-86. Granting relief and enforcing registered custody determinations.

JUDICIAL DECISIONS

Registration not a prerequisite to modification. — In a Georgia action to modify an Alaska child custody determination, although the Alaska judgment was not registered, the plain language of

O.C.G.A. §§ 19-9-85 and 19-9-86 did not require that the Alaska custody determination be registered before it was modifiable. *Lopez v. Olson*, 314 Ga. App. 533, 724 S.E.2d 837 (2012).

19-9-90. Finding of immediate physical custody; awarding of fees, costs, and expenses; drawing adverse inference from refusal to testify; spousal relationship irrelevant.

Cross references. — Privilege against self incrimination, § 24-5-506.

19-9-92. Awarding of necessary and reasonable expenses.

JUDICIAL DECISIONS

Only applicable to prevailing party in enforcement proceeding. — Costs and attorney fees are allowable under O.C.G.A. § 19-9-92 only to the prevailing party in an enforcement proceeding, not to a party prevailing on the issue of jurisdiction. *Delgado v. Combs*, 314 Ga. App. 419, 724 S.E.2d 436 (2012), cert. denied, No. S12C1106, 2012 Ga. LEXIS 602 (Ga. 2012).

CHAPTER 10

ABANDONMENT OF SPOUSE OR CHILD

19-10-1. Abandonment of dependent child; criminal penalties; continuing offense; venue; blood tests or other comparisons as evidence; payment of expenses of birth of child born out of wedlock; agreement for support of child born out of wedlock.

Cross references. — Husband and wife as witnesses for and against each other in criminal proceedings, § 24-5-503.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

No tort remedy against father's parents for violation of abandonment statute. — Legislature allowed for contempt, garnishment, and income withholding to enforce child support obligations and did not intend to create additional implied remedies under O.C.G.A. § 51-1-6 for violation of O.C.G.A. § 19-10-1, the child abandonment statute. Therefore, a wife was not entitled to recover damages from her ex-husband's parents for her husband's violation of § 19-10-1. *Bridges v. Wooten*, 305 Ga. App. 682, 700 S.E.2d 678 (2010).

19-10-2. Abandonment of dependent pregnant wife; criminal penalties; continuing offense.

Cross references. — Husband and wife as witnesses for and against each other in criminal proceedings, § 24-5-503.

CHAPTER 10A

SAFE PLACE FOR NEWBORNS

Sec.

19-10A-4. No criminal prosecution for leaving child in custody of medical facility.

Sec.

19-10A-6. Reimbursement of medical costs; placement with Department of Human Services.

19-10A-1. Short title.

RESEARCH REFERENCES

ALR. — Construction and application of State Abandoned Newborn Infant Protection Acts, 70 ALR6th 183.

19-10A-4. No criminal prosecution for leaving child in custody of medical facility.

A mother shall not be prosecuted for violating Code Section 16-5-70, 16-12-1, or 19-10-1 because of the act of leaving her newborn child in the physical custody of an employee, agent, or member of the staff of a medical facility who is on duty, whether there in a paid or volunteer position, provided that the newborn child is no more than one week old and the mother shows proof of her identity, if available, to the person with whom the newborn is left and provides her name and address. (Code 1981, § 19-10A-4, enacted by Ga. L. 2002, p. 1137, § 1; Ga. L. 2003, p. 140, § 19; Ga. L. 2013, p. 294, § 4-28/HB 242.)

The 2013 amendment, effective January 1, 2014, substituted “violating Code Section 16-5-70, 16-12-1, or 19-10-1 because” for “the crimes of cruelty to a child, Code Section 16-5-70; contributing to the delinquency, unruliness, or deprivation of a child, Code Section 16-12-1; or abandonment of a dependent child, Code Section 19-10-1, because” near the beginning of this Code section. See editor’s note for applicability.

Editor’s notes. — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: “This Act shall become effective on January 1, 2014, and

shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions.”

RESEARCH REFERENCES

ALR. — Construction and application of State Abandoned Newborn Infant Protection Acts, 70 ALR6th 183.

19-10A-6. Reimbursement of medical costs; placement with Department of Human Services.

A medical facility which accepts for inpatient admission a child left pursuant to Code Section 19-10A-4 shall be reimbursed by the Department of Human Services for all reasonable medical and other reasonable costs associated with the child prior to the child being placed in the care of the department. A medical facility shall notify the Department of Human Services at such time as the child is left and at the time the child is medically ready for discharge. Upon notification that the child is medically ready for discharge, the Department of Human Services shall take physical custody of the child within six hours. The Department of Human Services upon taking physical custody shall promptly bring the child before the juvenile court as required by Code Section 15-11-145. (Code 1981, § 19-10A-6, enacted by Ga. L. 2002, p. 1137, § 1; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2013, p. 294, § 4-29/HB 242.)

The 2013 amendment, effective January 1, 2014, substituted “Code Section 15-11-145” for “Code Section 15-11-47” at the end of the last sentence. See editor’s note for applicability.

Editor’s notes. — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: “This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions.”

CHAPTER 11

ENFORCEMENT OF DUTY OF SUPPORT

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ARTICLE 1
CHILD SUPPORT RECOVERY ACT

19-11-1. Short title.

JUDICIAL DECISIONS

Public assistance is nondistinguishing factor. — Child Support Recovery Act, O.C.G.A. § 19-11-1 et seq., does not contain any basis for continuing to distinguish between the procedure available when a child is receiving public assistance and that which is available in the absence of any such assistance. *Falkenberry v. Taylor*, 278 Ga. 842, 607 S.E.2d 567 (2005) (Unpublished).

Procedure available the same when child not receiving public assistance. — In a child support modification action, the trial court erred in concluding that evidence of the need for additional sup-

port was necessary and that the Department of Human Resources (DHR) lacked standing to file a modification action on behalf of a child not receiving public assistance unless it could show the child's need for additional support; by express statutory amendment, the General Assembly no longer reserved for the private bar those modification actions which involved children who did not receive public assistance and needed no additional support, but whose court-ordered provider enjoyed an enhanced financial status. *Falkenberry v. Taylor*, 278 Ga. 842, 607 S.E.2d 567 (2005) (Unpublished).

19-11-3. Definitions.

As used in this article, the term:

(1) “Account” means a demand deposit account, checking or negotiable order of withdrawal account, savings account, time deposit account, or a money market mutual fund account.

(2) “Court order for child support” means any order for child support issued by a court or administrative or quasi-judicial entity of this state or another state, including an order in a criminal proceeding which results in the payment of child support as a condition of probation or otherwise. Such order shall be deemed to be a IV-D order for purposes of this article when either party to the order submits a copy of the order for support and a signed application to the department for IV-D services, when the right to child support has been assigned to the department pursuant to subsection (a) of Code Section 19-11-6, or upon registration of a foreign order pursuant to Article 3 of this chapter.

(3) “Department” means the Department of Human Services.

(4) “Dependent child” means any person under the age of 18 who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States.

(5) “Duty of support” means any duty of support imposed or imposable by law or by court order, decree, or judgment.

(6) “Financial institution” means every federal or state chartered commercial or savings bank, including savings and loan associations and cooperative banks, federal or state chartered credit unions, benefit associations, insurance companies, safe-deposit companies, trust companies, and any money market mutual fund.

(7) “IV-D” means Title IV-D of the federal Social Security Act.

(8) “IV-D agency” means the Child Support Enforcement Agency of the Department of Human Services and its contractors.

(9) “Medical insurance obligee” means any person to whom a duty of medical support is owed.

(10) “Medical insurance obligor” means any person owing a duty of medical support.

(11) “Money market mutual fund” means every regulated investment company within the meaning of Section 851(a) of the Internal Revenue Code which seeks to maintain a constant net asset value of \$1.00 in accordance with 17 C.F.R. Section 270.2A-7.

(12) “Parent” means the natural or adoptive parents of a child and includes the father of a child born out of wedlock if his paternity has been established in a judicial proceeding or if he has acknowledged paternity under oath either in open court, in an administrative hearing, or by verified writing.

(13) “TANF” means temporary assistance for needy families. (Ga. L. 1973, p. 192, § 3; Ga. L. 1976, p. 1537, §§ 1, 2; Ga. L. 1997, p. 1613, § 23; Ga. L. 2003, p. 415, § 1; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2010, p. 245, § 1/HB 1118; Ga. L. 2014, p. 457, § 10/SB 282.)

The 2014 amendment, effective July 1, 2014, added paragraph (1); redesignated former paragraphs (1) through (4) as present paragraphs (2) through (5), respectively; added paragraph (6); redesignated former paragraphs (5) through (8) as present paragraphs (7) through (10),

respectively; added paragraph (11); redesignated former paragraph (9) as present paragraph (12); and added paragraph (13).

U.S. Code. — Section 851(a) of the Internal Revenue Code, referred to above, is codified as 26 U.S.C. § 851.

JUDICIAL DECISIONS

Adopting parent on equal footing as biological. — Georgia law specifically provides that a decree of adoption creates the relationship of parent and child between each petitioner and the adopted

individual, as if the adopted individual were a child of biological issue of that petitioner. *Hastings v. Hastings*, 291 Ga. 782, 732 S.E.2d 272 (2012).

19-11-6. Enforcement of child support payments and alimony for public assistance recipients.

JUDICIAL DECISIONS

Standing of department in claim against parent.

Trial court erred in ruling that the Georgia Department of Human Services could not bring an action under O.C.G.A. § 19-11-6(a) on behalf of a child to secure a support award under the provisions of O.C.G.A. § 19-6-10 because there was no dispute that the mother and the father lived separately and that there was no pending divorce action, conditions required under § 19-6-10. *Ga. Dep't of Human Servs. v. Wright*, 293 Ga. 330, 745 S.E.2d 628 (2013).

Department's claim for reimbursement of public assistance paid to child support obligee in bankruptcy

case. — Under O.C.G.A. § 19-11-6(a), a parent who accepted public assistance on behalf of a child was deemed to have assigned to the Department of Human Resources the right to child support owed to the parent by a Chapter 13 debtor, and the assignment occurred by operation of law when the Department undertook to collect money from the debtor; therefore, pursuant to 11 U.S.C. § 507(a)(7)(A), the Department's claim for reimbursement of the public assistance the Department paid was not entitled to priority status. *Sys. & Servs. Techs. v. Jordan (In re Jordan)*, No. 99-11854, 2000 Bankr. LEXIS 2218 (Bankr. S.D. Ga. Sept. 27, 2000).

19-11-9. Location of absent parents by department; assistance of other governmental agencies; putative father registry; use of information obtained.

RESEARCH REFERENCES

ALR. — Requirements and effects of putative father registries, 28 ALR6th 349.

19-11-9.3. Suspension or denial of license for noncompliance with child support order; interagency agreements; report to General Assembly.

Cross references. — Failure to pay child support prohibits licensure as money transmitter or payment instrument seller,

§ 7-1-693. Failure to pay child support prohibits licensure for cash payment instrument, § 7-1-708.1.

RESEARCH REFERENCES

ALR. — Validity, construction, and application of state statutes providing for

revocation of driver's license for failure to pay child support; 30 ALR6th 483.

19-11-12. Review of orders for child support; review procedures; order adjusting support award amount; no release from liability due to subsequent financial obligation.

Law reviews. — For annual survey of law on appellate practice and procedure, see 62 Mercer L. Rev. 25 (2010). For an-

nual survey of law on domestic relations, see 62 Mercer L. Rev. 105 (2010).

JUDICIAL DECISIONS

Need for additional support not required.

In a child support modification action, the trial court erred in concluding that evidence of the need for additional support was necessary and that the Department of Human Resources (DHR) lacked standing to file a modification action on behalf of a child not receiving public assistance unless it could show the child's need for additional support, and in failing to apply the child support guidelines of

O.C.G.A. § 19-6-15 and to justify any departure therefrom; by express statutory amendment, the General Assembly no longer reserved for the private bar those modification actions which involved children who did not receive public assistance and needed no additional support, but whose court-ordered provider enjoyed an enhanced financial status. *Falkenberry v. Taylor*, 278 Ga. 842, 607 S.E.2d 567 (2005) (Unpublished).

19-11-30.2. Information from financial institutions.

(a) As used in this Code section, the term “for cause” means that the department has reason to believe that an individual has opened an account at a financial institution.

(b) The department shall, pursuant to the provisions of subsection (f) of this Code section, request from each financial institution, not more frequently than on a quarterly basis, the name, record address, social security number, and other identifying data for each person listed in such request who maintains an account at such financial institution. The data provided shall be sent to the Department of Human Services Bank Match Registry. Such registry shall include only identifying information for obligors whom the IV-D agency believes owe child support and who are not under a child support order, and for obligors who are delinquent in an amount equal to or in excess of their support payment for one month. The department shall update such listing every calendar quarter by removing the names of all persons who have had no prior matches in the two immediately preceding quarters.

(c) The department may continue to request account matches on such removed names once a year for the two calendar years immediately following the year in which the names are removed or for cause.

(d) All requests made by the department pursuant to subsection (b) or (c) of this Code section shall be in machine readable form unless a financial institution expressly requests the department to submit the

request in writing. The financial institution shall furnish all such information in machine readable form, which meets criteria established by the department, within 30 days of such request. Each financial institution shall furnish all such information on those persons whose accounts bear a residential address within the state at the time such request is processed by the financial institution.

(e) In no event shall a request for identifying information be made to a financial institution on anyone other than an obligor whom the Department of Human Services has a good reason to believe owes child support and who is not under a child support order, or an obligor who is delinquent in an amount equal to or in excess of his or her support payment for one month.

(f) The Department of Human Services shall enter into agreements with financial institutions doing business in this state to develop and operate a data match system to the maximum extent feasible for the providing of the needed information to the department by the financial institution. At a minimum, the department shall identify the obligor by name and social security number or other taxpayer identification number. If the geographic region of an obligor is known by the Department of Human Services, and that department shall make an effort to determine the geographic region of an obligor, the department shall initially limit its request to the financial institution or institutions within that geographic region prior to making additional requests to other financial institutions in other geographic regions of the state. The department may pay a reasonable fee to the financial institution for conducting the searches required herein not to exceed the actual costs incurred by the financial institution. (Code 1981, § 19-11-30.2, enacted by Ga. L. 1997, p. 1613, § 30; Ga. L. 1999, p. 81, § 19; Ga. L. 2002, p. 1247, § 11; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2014, p. 457, § 11/SB 282; Ga. L. 2014, p. 866, § 19/SB 340.)

The 2014 amendments. — The first 2014 amendment, effective July 1, 2014, substituted the present provisions of subsection (a) for the former provisions, which read: “As used in Code Section 19-11-30.1, this Code section, and Code Sections 19-11-30.3 through 19-11-30.11, the term:

“(1) ‘Account’ means a demand deposit account, checking or negotiable order of withdrawal account, savings account, time deposit account, or a money market mutual fund account.

“(2) ‘Financial institution’ means every federal or state chartered commercial or savings bank, including savings and loan associations and cooperative banks, fed-

eral or state chartered credit unions, benefit associations, insurance companies, safe-deposit companies, trust companies, and any money market mutual fund.

“(3) ‘For cause’ means that the department has reason to believe that an individual has opened an account at a financial institution listed in paragraph (3) of this subsection.

“(4) ‘Money market mutual fund’ means every regulated investment company within the meaning of Section 851(a) of the Internal Revenue Code which seeks to maintain a constant net asset value of \$1.00 in accordance with 17 CFR 270.2A-7.” The second 2014 amendment, effective April 29, 2014, part of an Act to

revise, modernize, and correct the Code, subsection” at the end of former paragraph (3) of this graph (a)(3).

19-11-32. Process to collect delinquent support accounts; limitation.

(a) Notwithstanding other statutory provisions which provide for the execution, attachment, or levy against accounts, the IV-D agency, including its authorized contractors, may utilize the process established in this Code section and Code Sections 19-11-33 through 19-11-39 to collect delinquent support payments, provided that any exemptions or exceptions which specifically apply to enforcement of support obligations pursuant to other statutory provisions shall also apply.

(b) An obligor is subject to the provisions of this Code section and Code Sections 19-11-33 through 19-11-39 if the obligor’s support obligation is being enforced by the IV-D agency and if the support payments ordered pursuant to Georgia law or under a comparable statute of a foreign jurisdiction, as certified to the IV-D agency, are delinquent in an amount equal to the support payment for one month.

(c) Any amount forwarded by a financial institution under this Code section and Code Sections 19-11-33 through 19-11-39 shall not exceed the delinquent or accrued amount of support owed by the obligor. (Code 1981, § 19-11-32, enacted by Ga. L. 1997, p. 1613, § 31; Ga. L. 2014, p. 457, § 12/SB 282; Ga. L. 2014, p. 866, § 19/SB 340.)

The 2014 amendment, effective July 1, 2014, deleted the former second sentence of subsection (c), which read: “Financial institutions subject to administrative levy are defined in paragraph (3) of subsection (a) of Code Section 19-11-30.2.”

Editor’s notes. — Ga. L. 2014, p. 866, § 54(e)/SB 340, not codified by the General Assembly, provides: “In the event of a conflict between a provision in Sections 1

through 53 of this Act and a provision of another Act enacted at the 2014 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict.” Accordingly, the amendment to subsection (c) of this Code section by Ga. L. 2014, p. 866, § 19(2)/SB 340 was not given effect.

19-11-39. Computerized central case registry for support orders.

(a) The department shall create by contract, cooperative agreement, or otherwise a computerized central case registry for all support orders entered by any court or administrative tribunal of this state. All IV-D agency orders as well as those not within the IV-D agency shall be registered in this data base. The department may enter into a cooperative agreement with the Administrative Office of the Courts so as to obtain information needed to create and maintain the state registry of orders as required by federal law.

(b) The registry of orders shall include the following information for each case: the full names of each party and minor child, the date of birth and social security number for each such person, the last known address for each person at the time the order was entered, the name of the county in which the order was entered, any and all case identification numbers, including civil action filing numbers and IV-D agency assigned case numbers, and any such information as may be later required under federal law.

(c) In any case handled by the IV-D agency, the registry shall include payment records as well as the amount of child support liens. The payment record shall include:

(1) The amount of monthly or other periodic support owed under the order and other amounts including arrearages, interest or late payment penalties, and fees due or overdue under the order;

(2) Any amount described in paragraph (1) of this subsection that has been collected;

(3) The distribution of such collected amounts;

(4) The birth date of any child for whom the order requires the provision of support; and

(5) The amount of any lien imposed with respect to a child support order.

(d) The state agency operating the state case registry shall promptly establish and update, maintain, and regularly monitor case records in the state case registry with respect to which services are being provided by the IV-D agency. Services to be monitored include: information on administrative actions and administrative and judicial proceedings and orders related to paternity and support; information obtained from comparison with federal, state, or local sources of information; information on support collections and distributions; and any other relevant information.

(e) The information contained in the state case registry shall be available to state and federal agencies as authorized by law for the enforcement of support orders. The information shall be available for data comparisons with case registries of other states. (Code 1981, § 19-11-39, enacted by Ga. L. 1997, p. 1613, § 31; Ga. L. 2014, p. 457, § 13/SB 282.)

The 2014 amendment, effective July 1, 2014, in subsection (c), substituted “The” for “the” at the beginning of paragraphs (c)(1) and (c)(3) through (c)(5); in paragraph (c)(2), substituted “Any” for

“any” at the beginning and substituted “paragraph” for “item”; and in paragraph (c)(3) substituted “amounts” for “accounts”.

ARTICLE 2

UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT

19-11-69. Spouses competent and compellable to testify.

Cross references. — Certain communications privileged, § 24-5-501.

ARTICLE 3

UNIFORM INTERSTATE FAMILY SUPPORT ACT

PART 1

GENERAL PROVISIONS

19-11-100. Short title.

Editor's notes. — Ga. L. 2013, p. 705, § 1/SB 193, effective July 1, 2013, reenacted this Code section without change. Refer to bound volume for text of this Code section.

19-11-101. Definitions.

As used in this article, the term:

(1) “Child” means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual’s parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

(2) “Child support order” means a support order for a child, including a child who has attained the age of majority under the law of the issuing state or foreign country.

(3) “Convention” means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, concluded at The Hague on November 23, 2007.

(4) “Duty of support” means an obligation imposed or which may be imposed by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

(5) “Foreign country” means a country, including a political subdivision thereof, other than the United States, that authorizes the issuance of support orders and:

(A) Which has been declared under the law of the United States to be a foreign reciprocating country;

(B) Which has established a reciprocal arrangement for child support with this state as provided in Code Section 19-11-127;

(C) Which has enacted a law or established procedures for the issuance and enforcement of support orders which are substantially similar to the procedures under this article; or

(D) In which the convention is in force with respect to the United States.

(6) “Foreign support order” means a support order of a foreign tribunal.

(7) “Foreign tribunal” means a court, administrative agency, or quasi-judicial entity of a foreign country which is authorized to establish, enforce, or modify support orders or to determine parentage of a child. The term includes a competent authority under the convention.

(8) “Home state” means the state or foreign country in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state or foreign country in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

(9) “Income” includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of Georgia.

(10) “Income-withholding order” means an order or other legal process directed to an obligor’s employer or other debtor, pursuant to Code Sections 19-6-31 through 19-6-33, to withhold support from the income of the obligor.

(11) “Initiating tribunal” means the tribunal of a state or foreign country from which a petition or comparable pleading is forwarded or in which a petition or comparable pleading is filed for forwarding to another state or foreign country.

(12) “Issuing foreign country” means the foreign country in which a tribunal issues a support order or a judgment determining parentage of a child.

(13) “Issuing state” means the state in which a tribunal issues a support order or renders a judgment determining parentage of a child.

(14) “Issuing tribunal” means the tribunal of a state or foreign country that issues a support order or a judgment determining parentage of a child.

(15) “Law” includes decisional and statutory law and rules and regulations having the force of law.

(16) “Obligee” means:

(A) An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order or a judgment determining parentage of a child has been issued;

(B) A foreign country, state, or political subdivision of a state to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee in place of child support;

(C) An individual seeking a judgment determining parentage of the individual’s child; or

(D) A person that is a creditor in a proceeding under Part 7 of this article.

(17) “Obligor” means an individual or the estate of a decedent that:

(A) Owes or is alleged to owe a duty of support;

(B) Is alleged but has not been adjudicated to be a parent of a child;

(C) Is liable under a support order; or

(D) Is a debtor in a proceeding under Part 7 of this article.

(18) “Outside this state” means a location in another state or a country other than the United States, whether or not the country is a foreign country.

(19) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(20) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(21) “Register” means to record or file in a tribunal of this state a support order or judgment determining parentage of a child issued in another state or a foreign country.

(22) “Registering tribunal” means a tribunal in which a support order or judgment determining parentage of a child is registered.

(23) “Responding state” means a state in which a petition or comparable pleading for support or to determine parentage of a child is filed or to which a petition or comparable pleading is forwarded for filing from another state or foreign country.

(24) “Responding tribunal” means the authorized tribunal in a responding state or foreign country.

(25) “Spousal support order” means a support order for a spouse or former spouse of the obligor.

(26) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession under the jurisdiction of the United States. The term includes an Indian nation or tribe.

(27) “Support enforcement agency” means a public official, governmental entity, or private agency authorized to:

(A) Seek enforcement of support orders or laws relating to the duty of support;

(B) Seek establishment or modification of child support;

(C) Request determination of parentage of a child;

(D) Attempt to locate obligors or their assets; or

(E) Request determination of the controlling child support order.

(28) “Support order” means a judgment, decree, order, decision, or directive, whether temporary, final, or subject to modification, issued in a state or foreign country for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, retroactive support, or reimbursement for financial assistance provided to an individual obligee in place of child support. The term may include related costs and fees, interest, income withholding, automatic adjustment, reasonable attorney’s fees, and other relief.

(29) “Tribunal” means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage of a child. (Code 1981, § 19-11-101, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, rewrote this Code section.

JUDICIAL DECISIONS

Cited in Baars v. Freeman, 288 Ga. 835, 708 S.E.2d 273 (2011).

19-11-102. Designated tribunals; support enforcement agency.

(a) The superior courts, the Office of State Administrative Hearings, and the Department of Human Services are the tribunals of Georgia for purposes of this article.

(b) The Department of Human Services shall be the support enforcement agency of this state. (Code 1981, § 19-11-102, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, designated the existing provisions as subsection (a) and added subsection (b).

JUDICIAL DECISIONS

Cited in Baars v. Freeman, 288 Ga. 835, 708 S.E.2d 273 (2011).

19-11-103. Nature of remedies.

(a) Remedies provided by this article are cumulative and do not affect the availability of remedies under other law or the recognition of a foreign support order on the basis of comity.

(b) This article does not:

(1) Provide the exclusive method of establishing or enforcing a support order under the law of Georgia; or

(2) Grant a tribunal of Georgia jurisdiction to render judgment or issue an order relating to child custody or visitation in a proceeding under this article. (Code 1981, § 19-11-103, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, designated the existing provisions as subsection (a) and added subsection (b).

JUDICIAL DECISIONS

Cited in Baars v. Freeman, 288 Ga. 835, 708 S.E.2d 273 (2011).

19-11-104. Applicability.

(a) A tribunal of Georgia shall apply Parts 1 through 6 and, as applicable, Part 7 of this article to a support proceeding involving:

- (1) A foreign support order;
- (2) A foreign tribunal; or
- (3) An obligee, obligor, or child residing in a foreign country.

(b) A tribunal of Georgia that is requested to recognize and enforce a support order on the basis of comity may apply the procedural and substantive provisions of Parts 1 through 6 of this article.

(c) Part 7 of this article applies only to a support proceeding under the convention. In such a proceeding, if a provision of Part 7 of this article is inconsistent with Parts 1 through 6 of this article, Part 7 of this article controls. (Code 1981, § 19-11-104, enacted by Ga. L. 2013, p. 705, § 1/SB 193.)

Effective date. — This Code section became effective July 1, 2013

PART 2**JURISDICTION; COOPERATION BETWEEN STATES****19-11-110. Jurisdiction.**

(a) In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

- (1) The individual is personally served with process within Georgia;
- (2) The individual submits to the jurisdiction of Georgia by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
- (3) The individual resided with the child in Georgia;
- (4) The individual resided in Georgia and provided prenatal expenses or support for the child;
- (5) The child resides in Georgia as a result of the acts or directives of the individual;
- (6) The individual engaged in sexual intercourse in Georgia and the child may have been conceived by that act of intercourse;

(7) The individual asserted parentage of a child in the putative father registry maintained in this state by the Department of Human Services; or

(8) There is any other basis consistent with the Constitutions of Georgia and the United States for the exercise of personal jurisdiction.

(b) The bases of personal jurisdiction set forth in subsection (a) of this Code section or in any other law of this state may not be used to acquire personal jurisdiction for a tribunal of this state to modify a child support order of another state unless the requirements of Code Section 19-11-170 are met, or, in the case of a foreign support order, unless the requirements of Code Section 19-11-174 are met. (Code 1981, § 19-11-110, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, designated the existing provisions as subsection (a) and added subsection (b); and, in subsection (a), in the introductory language, substituted “or enforce a support” for “, enforce, or modify a support” and inserted “of a child”; and inserted “of a child” in paragraph (a)(7).

JUDICIAL DECISIONS

Cited in *Baars v. Freeman*, 288 Ga. 835, 708 S.E.2d 273 (2011).

RESEARCH REFERENCES

ALR. — Requirements and effects of putative father registries, 28 ALR6th 349.

19-11-111. Personal jurisdiction continues while Georgia tribunal retains continuing, exclusive jurisdiction.

Personal jurisdiction acquired by a tribunal of Georgia in a proceeding under this article or other law of Georgia relating to a support order continues so long as a tribunal of Georgia has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order as provided by Code Sections 19-11-114, 19-11-115, and 19-11-119.1. (Code 1981, § 19-11-111, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, substituted the present provisions of this Code section for the former provisions, which read: “A tribunal of Georgia exercising personal jurisdiction over a nonresident under Code Section 19-11-110 may apply Code Section 19-11-135 to receive evidence from another state and Code Section 19-11-137 to obtain discovery through a tribunal of another state. In all other respects, Parts 3 through 7 of this article do not apply and the tribunal shall apply the procedural and substantive law of Georgia, including

the rules on choice of law other than those established by this article.”

JUDICIAL DECISIONS

Cited in *Baars v. Freeman*, 288 Ga. 835, 708 S.E.2d 273 (2011).

19-11-112. Authority of tribunal.

Under this article, a tribunal in Georgia may serve as an initiating tribunal to forward proceedings to a tribunal of another state and as a responding tribunal for proceedings initiated in another state or foreign country. (Code 1981, § 19-11-112, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, inserted “a tribunal of” near the middle and added “or foreign country” at the end.

JUDICIAL DECISIONS

Cited in *Baars v. Freeman*, 288 Ga. 835, 708 S.E.2d 273 (2011).

19-11-113. Limitation on jurisdiction of Georgia tribunal if action filed in another state or foreign country.

(a) A tribunal in Georgia may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a pleading is filed in another state or a foreign country only if:

(1) The petition or comparable pleading in Georgia is filed before the expiration of the time allowed in the other state or the foreign country for filing a responsive pleading challenging the exercise of jurisdiction by the other state or the foreign country;

(2) The contesting party timely challenges the exercise of jurisdiction in the other state or the foreign country; and

(3) If relevant, Georgia is the home state of the child.

(b) A tribunal in Georgia may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state or a foreign country if:

(1) The petition or comparable pleading in the other state or foreign country is filed before the expiration of the time allowed in Georgia for filing a responsive pleading challenging the exercise of jurisdiction by Georgia;

(2) The contesting party timely challenges the exercise of jurisdiction in Georgia; and

(3) If relevant, the other state or foreign country is the home state of the child. (Code 1981, § 19-11-113, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, inserted “or a foreign country” in the introductory language of subsections (a) and (b); inserted “or the foreign coun-

try” twice in paragraph (a)(1) and once in paragraph (a)(2); and inserted “or foreign country” in paragraphs (b)(1) and (b)(3).

19-11-114. Continuing, exclusive jurisdiction to modify support order.

(a) A tribunal in Georgia that has issued a child support order consistent with the law of Georgia has and shall exercise continuing, exclusive jurisdiction to modify its child support order if the order is the controlling order and:

(1) At the time of the filing of a request for modification Georgia is the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(2) Even if Georgia is not the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, the parties consent in a record or in open court that the tribunal of Georgia may continue to exercise jurisdiction to modify its order.

(b) A tribunal in Georgia that has issued a child support order consistent with the law of Georgia may not exercise continuing, exclusive jurisdiction to modify the order if:

(1) All of the parties who are individuals file consent in a record with the tribunal of Georgia that a tribunal of another state that has jurisdiction over at least one of the parties who is an individual or that is located in the state of residence of the child may modify the order and assume continuing, exclusive jurisdiction; or

(2) Its order is not the controlling order.

(c) If a tribunal of another state has issued a child support order pursuant to this article or a law substantially similar to this article which modifies a child support order of a tribunal of Georgia, tribunals of Georgia shall recognize the continuing, exclusive jurisdiction of the tribunal of the other state.

(d) A tribunal of Georgia that lacks continuing, exclusive jurisdiction to modify a child support order may serve as an initiating tribunal to request a tribunal of another state to modify a support order issued in that state.

(e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal. (Code 1981, § 19-11-114, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, rewrote this Code section.

JUDICIAL DECISIONS

Jurisdiction over child support arrearages. — Georgia Uniform Interstate Family Support Act, O.C.G.A. § 19-11-101 et seq., did not deprive a trial court of jurisdiction over the issue of child support arrearages based upon a prior-filed United Kingdom enforcement proceeding. Continuing, exclusive jurisdiction over the child support provisions of

the decree existed in the trial court because the trial court issued the decree, the mother and the child resided in Georgia, and no evidence existed that the parents had filed written consents to allow the tribunal of another state to assume continuing, exclusive jurisdiction. *Baars v. Freeman*, 288 Ga. 835, 708 S.E.2d 273 (2011).

19-11-115. Initiating tribunal; responding tribunal.

(a) A tribunal in Georgia that has issued a child support order consistent with the law of Georgia may serve as an initiating tribunal to request a tribunal of another state to enforce:

(1) The order if the order is the controlling order and has not been modified by a tribunal of another state that assumed jurisdiction pursuant to this article; or

(2) A money judgment for arrears of support and interest on the order accrued before a determination that an order of a tribunal of another state is the controlling order.

(b) A tribunal in Georgia having continuing jurisdiction over a support order may act as a responding tribunal to enforce the order. (Code 1981, § 19-11-115, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, rewrote this Code section.

19-11-116. Governing tribunal when conflicting orders; determination of controlling order.

(a) If a proceeding is brought under this article and only one tribunal has issued a child support order, the order of that tribunal controls and must be recognized.

(b) If a proceeding is brought under this article and two or more child support orders have been issued by tribunals of Georgia, another state,

or a foreign country with regard to the same obligor and same child, a tribunal of Georgia having personal jurisdiction over both the obligor and individual obligee shall apply the following rules and by order shall determine which order controls and must be recognized:

(1) If only one of the tribunals would have continuing, exclusive jurisdiction under this article, the order of that tribunal controls;

(2) If more than one of the tribunals would have continuing, exclusive jurisdiction under this article:

(A) An order issued by a tribunal in the current home state of the child controls; or

(B) If an order has not been issued in the current home state of the child, the order most recently issued controls; or

(3) If none of the tribunals would have continuing, exclusive jurisdiction under this article, the tribunal of Georgia shall issue a child support order, which controls.

(c) If two or more child support orders have been issued for the same obligor and same child, upon request of a party who is an individual or that is a support enforcement agency, a tribunal in Georgia having personal jurisdiction over both the obligor and the obligee who is an individual shall determine which order controls subsection (b) of this Code section. The request may be filed with a registration for enforcement or registration for modification pursuant to Part 6 of this article or may be filed as a separate proceeding.

(d) A request to determine which is the controlling order must be accompanied by a copy of every child support order in effect and the applicable record of payments. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

(e) The tribunal that issued the controlling order under subsection (a), (b), or (c) of this Code section has continuing jurisdiction to the extent provided in Code Sections 19-11-114 and 19-11-115.

(f) A tribunal of Georgia that determines by order which is the controlling order under paragraph (1) or (2) of subsection (b) or subsection (c) of this Code section or that issues a new controlling order under paragraph (3) of subsection (b) of this Code section shall state in that order:

(1) The basis upon which the tribunal made its determination;

(2) The amount of prospective support, if any; and

(3) The total amount of consolidated arrears and accrued interest, if any, under all of the orders after all payments made are credited as provided by Code Section 19-11-118.

(g) Within 30 days after issuance of an order determining which is the controlling order, the party obtaining the order shall file a certified copy of it in each tribunal that issued or registered an earlier order of child support. A party or support enforcement agency obtaining the order that fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

(h) An order that has been determined to be the controlling order, or a judgment for consolidated arrears of support and interest, if any, made pursuant to this Code section must be recognized in proceedings under this article. (Code 1981, § 19-11-116, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, rewrote this Code section.

19-11-117. Enforcement of two or more child support orders, at least one of which was issued by another state or foreign country.

In responding to registrations or petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another state or a foreign country, a tribunal of Georgia shall enforce those orders in the same manner as if the orders had been issued by a tribunal of Georgia. (Code 1981, § 19-11-117, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, deleted “multiple” preceding “registrations” near the beginning, inserted “or a foreign country”, and deleted “multiple” preceding “orders” near the end.

19-11-118. Crediting of amounts collected.

A tribunal of Georgia shall credit amounts collected for a particular period pursuant to any child support order against the amounts owed for the same period under any other child support order for support of the same child issued by a tribunal of Georgia or another state, or a foreign country. (Code 1981, § 19-11-118, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, substituted the present provisions of this Code section for the former provisions, which read: “Amounts collected and credited for a particular period pursuant to a support order issued by a tribunal of another state must be credited against the amounts accruing or accrued for the same period under a support order issued by the tribunal of Georgia.”

19-11-119. Evidentiary issues outside state; application.

A tribunal of Georgia exercising personal jurisdiction over a nonresident in a proceeding under this article, under other law of Georgia relating to a support order, or recognizing a foreign support order may receive evidence from outside this state pursuant to Code Section 19-11-135, communicate with a tribunal outside this state pursuant to Code Section 19-11-136, and obtain discovery through a tribunal outside this state pursuant to Code Section 19-11-137. In all other respects, Parts 3 through 6 of this article do not apply and the tribunal shall apply the procedural and substantive law of Georgia. (Code 1981, § 19-11-119, enacted by Ga. L. 2013, p. 705, § 1/SB 193.)

Effective date. — This Code section became effective July 1, 2013.

19-11-119.1. Spousal support order; modification; initiating tribunal to request enforcement; responding tribunal to enforce or modify order.

(a) A tribunal of Georgia issuing a spousal support order consistent with the law of Georgia has continuing, exclusive jurisdiction to modify the spousal support order throughout the existence of the support obligation.

(b) A tribunal of Georgia may not modify a spousal support order issued by a tribunal of another state or a foreign country having continuing, exclusive jurisdiction over that order under the law of that state or foreign country.

(c) A tribunal of Georgia that has continuing, exclusive jurisdiction over a spousal support order may serve as:

(1) An initiating tribunal to request a tribunal of another state to enforce the spousal support order issued in this state; or

(2) A responding tribunal to enforce or modify its own spousal support order. (Code 1981, § 19-11-119.1, enacted by Ga. L. 2013, p. 705, § 1/SB 193.)

Effective date. — This Code section became effective July 1, 2013.

PART 3

CIVIL PROVISIONS

19-11-120. Application of part; initiation of a proceeding.

(a) Except as otherwise provided in this article, this part applies to all proceedings under this article.

(b) An individual petitioner or a support enforcement agency may initiate a proceeding authorized under this article by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state or a foreign country which has or can obtain personal jurisdiction over the respondent. (Code 1981, § 19-11-120, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, deleted former subsection (b), which read: “(b) This article provides for the following proceedings:

“(1) Establishment of an order for spousal support or child support pursuant to Part 4 of this article;

“(2) Enforcement of a support order and income-withholding order of another state without registration pursuant to Part 5 of this article;

“(3) Registration of an order for spousal support or child support of another state for enforcement pursuant to Part 6 of this article;

“(4) Modification of an order for child

support or spousal support issued by a tribunal of Georgia pursuant to Code Sections 19-11-112 through 19-11-115;

“(5) Registration of an order for child support of another state for modification pursuant to Part 6 of this article;

“(6) Determination of parentage pursuant to Part 7 of this article; and

“(7) Assertion of jurisdiction over non-residents pursuant to Code Sections 19-11-110 and 19-11-111.”; redesignated former subsection (c) as present subsection (b); and, in present subsection (b), substituted “initiate” for “commence” near the beginning and inserted “or a foreign country” near the end.

19-11-121. Representative for minor parent.

Editor’s notes. — Ga. L. 2013, p. 705, § 1/SB 193, effective July 1, 2013, reenacted this Code section without change.

Refer to bound volume for text of this Code section.

19-11-122. Governing law and procedure for responding Georgia tribunal.

Except as otherwise provided in this article, a responding tribunal of Georgia:

(1) Shall apply the procedural and substantive law generally applicable to similar proceedings originating in Georgia and may exercise all powers and provide all remedies available in those proceedings; and

(2) Shall determine the duty of support and the amount payable in accordance with the law and support guidelines of Georgia. (Code 1981, § 19-11-122, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, substituted “provided in” for “provided by” in the introductory language; and deleted “, including the rules on choice of law,” following “substantive law” in paragraph (1).

19-11-123. Information to be provided to responding tribunal.

(a) Upon the filing of a petition authorized by this article, an initiating tribunal of Georgia shall forward the petition and its accompanying documents:

(1) To the responding tribunal or appropriate support enforcement agency in the responding state; or

(2) If the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(b) If requested by the responding tribunal, a tribunal of Georgia shall issue a certificate or other document and make findings required by the law of the responding state. If the responding tribunal is in a foreign country, upon request the tribunal of Georgia shall specify the amount of support sought, convert that amount into the equivalent amount in the foreign currency under applicable official or market exchange rate as publicly reported, and provide any other documents necessary to satisfy the requirements of the responding foreign tribunal. (Code 1981, § 19-11-123, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, substituted “tribunal of Georgia shall forward the petition” for “tribunal of this state shall forward three copies of the petition” in the introductory language of subsection (a); and rewrote subsection (b), which read: “If a responding state has not enacted this article or a law or procedure substantially similar to this article, a tri-

bunal of Georgia may issue a certificate or other document and make findings required by the law of the responding state. If the responding state is a foreign jurisdiction, the tribunal may specify the amount of support sought and provide other documents necessary to satisfy the requirements of the responding state.”

JUDICIAL DECISIONS

Cited in *Baars v. Freeman*, 288 Ga. 835, 708 S.E.2d 273 (2011).

19-11-124. Receipt of petition of pleading by responding Georgia tribunal; action authorized; limitations; foreign currency conversion.

(a) When a responding tribunal of Georgia receives a petition or comparable pleading from an initiating tribunal or directly pursuant to subsection (b) of Code Section 19-11-120, it shall cause the petition or pleading to be filed and notify the petitioner where and when it was filed.

(b) A responding tribunal of Georgia, to the extent not prohibited by other law, may do one or more of the following:

(1) Establish or enforce a support order, modify a child support order, determine the controlling child support order, or determine parentage of a child;

(2) Order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(3) Order income withholding;

(4) Determine the amount of any arrearages and specify a method of payment;

(5) Enforce orders by civil or criminal contempt, or both;

(6) Set aside property for satisfaction of the support order;

(7) Place liens and order execution on the obligor's property;

(8) Order an obligor to keep the tribunal informed of the obligor's current residential address, e-mail address, telephone number, employer, address of employment, and telephone number at the place of employment;

(9) Issue an order for the arrest of an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the arrest order in any local and state computer systems for criminal warrants;

(10) Order the obligor to seek appropriate employment by specified methods;

(11) Award reasonable attorney's fees and other fees and costs; and

(12) Grant any other available remedy.

(c) A responding tribunal of Georgia shall include in a support order issued under this article, or in the documents accompanying the order, the calculations on which the support order is based.

(d) A responding tribunal of Georgia may not condition the payment of a support order issued under this article upon compliance by a party with provisions for visitation.

(e) If a responding tribunal of Georgia issues an order under this article, the tribunal shall send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any.

(f) If requested to enforce a support order, arrears, or judgment or modify a support order stated in a foreign currency, a responding tribunal of Georgia shall convert the amount stated in the foreign currency to the equivalent amount in dollars under the applicable official or market exchange rate as publicly reported. (Code 1981, § 19-11-124, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, substituted “subsection (b)” for “subsection (c)” in subsection (a); substituted “not prohibited by other law” for “otherwise authorized” in the introductory language of subsection (b); substituted the present provisions of paragraph (b)(1) for

the former provisions, which read: “Issue or enforce a support order, modify a child support order, or render a judgment to determine parentage”; inserted “e-mail address,” in paragraph (b)(8); added “for criminal warrants” at the end of paragraph (b)(9); and added subsection (f).

19-11-125. Receipt by inappropriate tribunal.

If a petition or comparable pleading is received by an inappropriate tribunal of this state, the tribunal shall forward the pleading and accompanying documents to an appropriate tribunal of this state or another state and notify the petitioner where and when the pleading was sent. (Code 1981, § 19-11-125, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, substituted “the tribunal shall” for “it shall” near the middle, and substi-

tuted “of this state” for “in this state” near the end.

19-11-126. Support enforcement agency’s services; determining controlling order; foreign currency conversion; enforcement of support order and income withholding order of another state; absence of fiduciary relationship.

(a) A support enforcement agency of this state, upon request, shall provide services to a petitioner in a proceeding under this article.

(b) A support enforcement agency of this state that is providing services to the petitioner shall:

(1) Take all steps necessary to enable an appropriate tribunal of Georgia, another state, or a foreign country to obtain jurisdiction over the respondent;

(2) Request an appropriate tribunal to set a date, time, and place for a hearing;

(3) Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(4) Within five days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written notice in a record from an initiating, responding, or registering tribunal, send a copy of the notice to the petitioner or other appropriate agency;

(5) Within five days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written communication in a record from the respondent or the respondent's attorney, send a copy of the communication to the petitioner; and

(6) Notify the petitioner if jurisdiction over the respondent cannot be obtained.

(c) A support enforcement agency of this state that requests registration of a child support order in this state for enforcement or for modification shall make reasonable efforts:

(1) To ensure that the order to be registered is the controlling order; or

(2) If two or more child support orders exist and the identity of the controlling order has not been determined, to ensure that a request for such a determination is made in a tribunal having jurisdiction to do so.

(d) A support enforcement agency of this state that requests registration and enforcement of a support order, arrears, or judgment stated in a foreign currency shall convert the amounts stated in the foreign currency into the equivalent amounts in dollars under the applicable official or market exchange rate as publicly reported.

(e) A support enforcement agency of this state shall issue or request a tribunal of Georgia to issue a child support order and an income withholding order that redirect payment of current support, arrears, and interest if requested to do so by a support enforcement agency of another state pursuant to Code Section 19-11-138.

(f) This article does not create a relationship of attorney-client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency. (Code 1981, § 19-11-126, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, in subsection (b), in the introductory language, inserted "of this state" and deleted "as appropriate" following "the pe-

titioner"; substituted "of Georgia, another state, or a foreign country" for "in Georgia or another state" in paragraph (b)(1); inserted "in a record" in paragraphs (b)(4)

and (b)(5); added subsections (c) through (e); and redesignated former subsection (c) as subsection (f).

19-11-127. Authority of Attorney General.

(a) If the Attorney General determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the Attorney General may provide those services directly to the individual.

(b) The Attorney General may determine that a foreign country has established a reciprocal arrangement for child support with this state and take appropriate action for notification of the determination. (Code 1981, § 19-11-127, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, deleted former subsections (a) and (b), which read: “(a) The district attorney of each judicial circuit shall be authorized to represent the Department of Human Services in any proceeding under this article; otherwise, at the option of the district attorney, actions under this article on behalf of the department shall be brought by attorneys appointed by the Attorney General. Written delegation of such duties previously executed by a district attorney pursuant to Article 2 of this chapter, the “Uniform Reciprocal Enforcement of Support Act,” particularly Code Section 19-11-53, shall constitute a delegation of such representation to the Attorney General for purposes of this article. In all actions brought or maintained by the Department of Human Services, the department shall be regarded as the sole

client of such attorney, and no attorney-client relationship shall be created between such attorney and any individual seeking or receiving services under this article through the Department of Human Services. The department may require a completed application for services pursuant to Title IV-D of the federal Social Security Act as a condition of providing any services under this article.

“(b) Where a support order is established pursuant to Code Section 19-11-140 incident to representation of the department by the district attorney, there shall be paid to the county in which the petition is handled the sum of \$50.00 for each such support order established, whether this state is the initiating or responding jurisdiction.”; redesignated former subsection (c) as present subsection (a); and added present subsection (b).

19-11-128. Employment of private counsel.

Editor’s notes. — Ga. L. 2013, p. 705, § 1/SB 193, effective July 1, 2013, reenacted this Code section without change.

Refer to bound volume for text of this Code section.

19-11-129. State information agency.

(a) The Department of Human Services is the state information agency under this article.

(b) The state information agency shall:

(1) Compile and maintain a current list, including addresses, of the tribunals in this state which have jurisdiction under this article

and any support enforcement agencies in this state and transmit a copy to the state information agency of every other state;

(2) Maintain a register of names and addresses of tribunals and support enforcement agencies received from other states;

(3) Forward to the appropriate tribunal in the county in Georgia in which the obligee who is an individual or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under this article received from another state or a foreign country; and

(4) Obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, drivers' licenses, and social security. (Code 1981, § 19-11-129, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, inserted "names and addresses of" in paragraph (b)(2); in paragraph (b)(3), substituted "the county in Georgia in which the obligee who is an individual" for "the place in Georgia in which the individual obligee" near the beginning,

and substituted "another state or a foreign country" for "an initiating tribunal or the state information agency of the initiating state" near the end; and substituted "drivers" for "driver's" near the end of paragraph (b)(4).

19-11-130. Filing of petition to establish, register, or modify support order; required information; relief sought.

(a) In a proceeding under this article, a petitioner seeking to establish a support order to determine parentage of a child, or to register and modify a support order of a tribunal of another state or a foreign country must file a petition. Unless otherwise ordered under Code Section 19-11-131, the petition or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee or the parent and alleged parent and the name, sex, residential address, social security number, and date of birth of each child for whose benefit support is sought or whose parentage is to be determined. Unless filed at the time of registration, the petition must be accompanied by a copy of any support order known to have been issued by another tribunal. The petition may include any other information that may assist in locating or identifying the respondent.

(b) The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency. (Code 1981, § 19-11-130, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, in subsection (a), rewrote the first sentence, which read: “A petitioner seeking to establish or modify a support order or to determine parentage in a proceeding under this article must verify the petition”; in the second sentence, inserted “or the parent and alleged parent”; and in the second and third sentences, substituted

“whose benefit support is sought or whose parentage is to be determined. Unless filed at the time of registration the petition must be accompanied by a copy of any support order known to have been issued by another tribunal.” for “whom support is sought. The petition must be accompanied by a certified copy of any support order in effect.”

19-11-131. Nondisclosure of identifying information where health, safety, or liberty at risk; disclosure of information in the interest of justice.

If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of specific identifying information, that information must be sealed and may not be disclosed to the other party or the public. After a hearing in which a tribunal takes into consideration the health, safety, or liberty of the party or child, the tribunal may order disclosure of information that the tribunal determines to be in the interest of justice. (Code 1981, § 19-11-131, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, substituted the present provisions of this Code section for the former provisions, which read: “Upon a finding, which may be made ex parte, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the

disclosure of identifying information, or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this article.”

19-11-132. Fees and costs.

(a) The petitioner may not be required to pay a filing fee or other costs.

(b) If an obligee prevails, a responding tribunal of Georgia may assess against an obligor filing fees, reasonable attorney’s fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee’s witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state or foreign country, except as provided by other law. Attorney’s fees may be taxed

as costs and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs, and expenses.

(c) The tribunal shall order the payment of costs and reasonable attorney's fees if it determines that a hearing was requested primarily for delay. In a proceeding under Part 6 of this article, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change. (Code 1981, § 19-11-132, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, in subsection (b), inserted "of Georgia" in the first sentence, and inserted "or foreign country" in the second sentence.

19-11-133. Personal jurisdiction.

(a) Participation by a petitioner in a proceeding under this article before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

(b) A petitioner is not amenable to service of civil process while physically present in this state to participate in a proceeding under this article.

(c) The immunity granted by this Code section does not extend to civil litigation based on acts unrelated to a proceeding under this article committed by a party while physically present in Georgia to participate in the proceeding. (Code 1981, § 19-11-133, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, inserted "under this article" in subsection (a) and inserted "physically" in subsection (c).

19-11-134. Defense of nonparentage.

Editor's notes. — Ga. L. 2013, p. 705, § 1/SB 193, effective July 1, 2013, reenacted this Code section without change. Refer to bound volume for text of this Code section.

19-11-135. Physical presence of individual nonresident party not required; admissible evidence.

(a) The physical presence of a nonresident party who is an individual in a tribunal of Georgia is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage of a child.

(b) An affidavit, a document substantially complying with federally mandated forms, or a document incorporated by reference in any of them, which would not be excluded under the hearsay rule if given in person, is admissible in evidence if given under penalty of perjury by a party or witness residing outside this state.

(c) A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it and is admissible to show whether payments were made.

(d) Copies of bills for testing for parentage of a child, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least ten days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

(e) Documentary evidence transmitted from outside this state to a tribunal of Georgia by telephone, telecopier, or other electronic means that do not provide an original record may not be excluded from evidence on an objection based on the means of transmission.

(f) In a proceeding under this article, a tribunal of Georgia shall permit a party or witness residing outside this state to be deposed or to testify under penalty of perjury by telephone, audiovisual means, or other electronic means at a designated tribunal or other location. A tribunal of Georgia shall cooperate with other tribunals in designating an appropriate location for the deposition or testimony.

(g) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(h) A privilege against disclosure of communications between spouses does not apply in a proceeding under this article.

(i) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this article.

(j) A voluntary acknowledgment of paternity, certified as a true copy, is admissible to establish parentage of the child. (Code 1981, § 19-11-135, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, in subsection (a), substituted “a nonresident party who is an individual in a tribunal” for “the petitioner in a responding tribunal” near the beginning and added “of a child” at the end; in

subsection (b), substituted “An affidavit, a document” for “A verified petition, affidavit, document” at the beginning, near the middle, substituted “or a document” for “and a document” and substituted “which would not be excluded” for “not excluded”

and substituted “under penalty of perjury by a party or witness residing outside this state” for “under oath by a party or witness residing in another state” at the end; inserted “of a child,” in subsection (d); in subsection (e), substituted “outside this state” for “another state”, inserted “electronic”, and substituted “original record” for “original writing”; in subsection (f), in the first sentence, substituted “shall per-

mit a party or witness residing outside this state” for “may permit a party or witness residing in another state” near the beginning, inserted “under penalty of perjury” near the middle, deleted “in that state” following “location” at the end, and substituted “of Georgia shall cooperate with other tribunals” for “this state shall cooperate with tribunals of other states”; and added subsection (j).

JUDICIAL DECISIONS

Testimony by telephone. — Pursuant to O.C.G.A. § 19-11-135(f) and given that two closely interrelated contempt proceedings between a former husband and a former wife were consolidated for hearing, the trial court did not abuse the court’s

discretion in permitting one of the former spouses to testify by telephone or by not dismissing the spouse’s contempt motion for want of prosecution. *Baars v. Freeman*, 288 Ga. 835, 708 S.E.2d 273 (2011).

19-11-136. Communication between tribunals.

A tribunal in Georgia may communicate with a tribunal outside this state in a record, or by telephone, e-mail, or other means, to obtain information concerning the laws, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding. A tribunal in Georgia may furnish similar information by similar means to a tribunal outside this state. (Code 1981, § 19-11-136, enacted by Ga. L. 1997, p. 1613 § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, in the first sentence, substituted “a tribunal outside this state in a record, or by telephone, email, or” for “a tribunal of another state in writing, or by telephone, or” near the beginning, deleted “of

that state” following “laws” near the middle, and deleted “in the other state” following “proceeding” at the end; and substituted “outside this state” for “of another state” at the end of the second sentence.

19-11-137. Tribunal’s authority to accomplish discovery.

A tribunal of this state may:

- (1) Request a tribunal outside this state to assist in obtaining discovery; and
- (2) Upon request, compel a person over which it has jurisdiction to respond to a discovery order issued by a tribunal outside this state. (Code 1981, § 19-11-137, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, substituted “outside this state”

for “of another state” in paragraphs (1) and (2), and substituted “over which” for

“over whom” in paragraph (2).

19-11-138. Disbursement of funds; redirecting payments.

(a) A support enforcement agency or tribunal in Georgia shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state or a foreign country a certified statement by the custodian of the record of the amounts and dates of all payments received.

(b) If neither the obligor, nor the obligee who is an individual, nor the child resides in this state, upon request from the support enforcement agency of Georgia or another state, the support enforcement agency of this state or a tribunal of this state shall:

(1) Direct that the support payment be made to the support enforcement agency in the state in which the obligee is receiving services; and

(2) Issue and send to the obligor’s employer a conforming income withholding order or an administrative notice of change of payee, reflecting the redirected payments.

(c) The support enforcement agency of this state receiving redirected payments from another state pursuant to a law similar to subsection (b) of this Code section shall furnish to a requesting party or tribunal of the other state a certified statement by the custodian of the record of the amount and dates of all payments received. (Code 1981, § 19-11-138, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, designated the existing provisions as subsection (a) and inserted “or a foreign country” in the last sentence; and added subsections (b) and (c).

PART 4

ESTABLISHMENT OF SUPPORT ORDER

19-11-140. Authority of tribunal upon failure to issue support order; temporary child support order.

(a) If a support order entitled to recognition under this article has not been issued, a responding tribunal of this state with personal jurisdiction over the parties may issue a support order if:

(1) The individual seeking the order resides outside this state; or

(2) The support enforcement agency seeking the order is located outside this state.

(b) The tribunal may issue a temporary child support order if the tribunal determines that such an order is appropriate and the individual ordered to pay is:

- (1) A presumed father of the child;
- (2) Petitioning to have his paternity adjudicated;
- (3) Identified as the father of the child through genetic testing;
- (4) An alleged father who has declined to submit to genetic testing;
- (5) Shown by clear and convincing evidence to be the father of the child;
- (6) An acknowledged father as provided by applicable state law or the law of a foreign country;
- (7) The mother of the child; or
- (8) An individual who has been ordered to pay child support in a previous proceeding and the order has not been reversed or vacated.

(c) Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to Code Section 19-11-124. (Code 1981, § 19-11-140, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, inserted “with personal jurisdiction over the parties” in the introductory paragraph of subsection (a); replaced “in another state” with “outside this state” in paragraphs (1) and (2) of subsection (a); and substituted the present provisions of subsection (b) for the former provisions, which read: “(b) The tribunal may issue a temporary child support order if:

- “(1) The respondent has signed a verified statement acknowledging parentage;
- “(2) The respondent has been determined by or pursuant to law to be the parent; or
- “(3) There is other clear and convincing evidence that the respondent is the child’s parent”.

19-11-141. Responding tribunal.

A tribunal of Georgia authorized to determine parentage of a child may serve as a responding tribunal in a proceeding to determine parentage of a child brought under this article or a law or procedure substantially similar to this article. (Code 1981, § 19-11-141, enacted by Ga. L. 2013, p. 705, § 1/SB 193.)

Effective date. — This Code section became effective July 1, 2013.

PART 5

DIRECT ENFORCEMENT OF ORDER OF ANOTHER STATE WITHOUT REGISTRATION

19-11-150. Issuance of income-withholding orders.

An income-withholding order issued in another state may be sent by or on behalf of the obligee, or by the support enforcement agency, to the person defined as the obligor's employer pursuant to Code Sections 19-6-31 through 19-6-33 without first filing a petition or comparable pleading or registering the order with a tribunal of this state. (Code 1981, § 19-11-150, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, in the middle of this Code section, inserted "person defined as the", inserted "by or on behalf of the obligee, or

by the support enforcement agency," and inserted "person defined as the".

19-11-151. Obligation of employer upon receipt of income-withholding order.

(a) Upon receipt of an income-withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor.

(b) The employer shall treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of Georgia.

(c) Except as otherwise provided by subsection (d) of this Code section and Code Section 19-11-152, the employer shall withhold and distribute the funds as directed in the withholding order by complying with the terms of the order which specify:

(1) The duration and the amount of periodic payments of current child support, stated as a sum certain;

(2) The person designated to receive payments and the address to which the payments are to be forwarded;

(3) Medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;

(4) The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and

(5) The amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

(d) An employer shall comply with the law of the state of the obligor’s principal place of employment for withholding from income with respect to:

- (1) The employer’s fee for processing an income-withholding order;
- (2) The maximum amount permitted to be withheld from the obligor’s income; and
- (3) The time periods within which the employer must implement the withholding order and forward the child support payment. (Code 1981, § 19-11-151, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, deleted “or agency” preceding “designated” in paragraph (c)(2).

19-11-152. Receipt of two or more income-withholding orders.

If an obligor’s employer receives two or more income-withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the orders if the employer complies with the law of the state of the obligor’s principal place of employment to establish the priorities for withholding and allocating income withheld for two or more child support obligees. (Code 1981, § 19-11-152, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, substituted “two or more” for “multiple” near the beginning and end, and deleted “multiple” preceding “orders” near the middle.

19-11-153. Civil liability.

An employer that complies with an income-withholding order issued in another state in accordance with this article is not subject to civil liability to an individual or agency with regard to the employer’s withholding of child support from the obligor’s income. (Code 1981, § 19-11-153, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, substituted “that complies” for “who complies” near the beginning.

19-11-154. Penalties for employer’s noncompliance.

An employer that willfully fails to comply with an income-withholding order issued in another state and received for enforcement is subject to the same penalties that may be imposed for

noncompliance with an order issued by a tribunal in Georgia. (Code 1981, § 19-11-154, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, substituted “that willfully” for “who willfully” near the beginning and substituted “in another” for “by another” near the middle.

19-11-155. Contesting of order from another tribunal.

(a) An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in Georgia by registering the order in a tribunal of Georgia and filing a contest to that order as provided in Part 6 of this article, or otherwise contesting the order in the same manner as if the order had been issued by a tribunal of Georgia.

(b) The obligor shall give notice of the contest to:

(1) Any support enforcement agency providing services to the obligee;

(2) Each employer that has directly received an income-withholding order relating to the obligor; and

(3) The person designated to receive payments in the income-withholding order or, if no person is designated, to the obligee. (Code 1981, § 19-11-155, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, in subsection (a), inserted “by registering the order in a tribunal of Georgia and filing a contest to that order as provided in Part 6 of this article, or otherwise contesting the order” and deleted the former second sentence, which read: “Code Section 19-11-163 applies to the contest.”; inserted “relating to the obligor” in paragraph (b)(2); and deleted “or agency” following “person” twice in paragraph (b)(3).

19-11-156. Enforcement of orders issued by another state or foreign country.

(a) A party or support enforcement agency seeking to enforce a support order or an income-withholding order, or both, issued in another state or a foreign support order may send the documents required for registering the order to a support enforcement agency of Georgia.

(b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of Georgia to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the

order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this article. (Code 1981, § 19-11-156, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, in subsection (a), inserted “or support enforcement agency” near the beginning and substituted “issued in another state or a foreign support order” for “issued by a tribunal of another state” near the middle.

PART 6

ENFORCEMENT AND MODIFICATION OF SUPPORT ORDER AFTER REGISTRATION

19-11-160. Registration of orders issued by another state or foreign country.

A support order or income-withholding order issued in another state or a foreign support order may be registered in Georgia for enforcement. (Code 1981, § 19-11-160, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, substituted “or income-withholding order issued in another state or a foreign support order” for “or an income-withholding order issued by a tribunal of another state” in this Code section.

19-11-161. Requirements for registration of orders issued by another state or foreign country; other filings.

(a) Except as otherwise provided in Code Section 19-11-184.1, a support order or income-withholding order of another state or a foreign support order may be registered in Georgia by sending the following records to the appropriate tribunal in Georgia:

- (1) A letter of transmittal to the tribunal requesting registration and enforcement;
- (2) Two copies, including one certified copy, of the order to be registered, including any modification of the order;
- (3) A sworn statement by the person requesting registration or a certified statement by the custodian of the records showing the amount of any arrearage;
- (4) The name of the obligor and, if known:
 - (A) The obligor’s address and social security number;
 - (B) The name and address of the obligor’s employer and any other source of income of the obligor; and

(C) A description and the location of property of the obligor in Georgia not exempt from execution; and

(5) Except as otherwise provided in Code Section 19-11-131, the name and address of the obligee and, if applicable, the person to whom support payments are to be remitted.

(b) On receipt of a request for registration, the registering tribunal shall cause the order to be filed as an order of a tribunal of another state or a foreign support order, together with one copy of the documents and information, regardless of their form.

(c) A petition, motion, or comparable filing seeking a remedy that must be affirmatively sought under other laws of this state, and discovery incident thereto, may be filed at the same time as the request for registration or later. The pleading, motion, or other filing must specify the grounds for the remedy sought. For purposes of this subsection, remedies sought may include, but are not limited to, a rule for contempt or a petition for entry of an income deduction order.

(d) If two or more orders are in effect, the person requesting registration shall:

(1) Furnish to the tribunal a copy of every support order asserted to be in effect in addition to the documents specified in this Code section;

(2) Specify the order alleged to be the controlling order, if any; and

(3) Specify the amount of consolidated arrears, if any.

(e) A request for a determination of which is the controlling order may be filed separately or with a request for registration and enforcement or for registration and modification. The person requesting registration shall give notice of the request to each party whose rights may be affected by the determination. (Code 1981, § 19-11-161, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, in subsection (a), in the introductory language, substituted “Except as otherwise provided in Code Section 19-11-184.1,” for “A” at the beginning, inserted “or a foreign support order” in the middle, and substituted “records” for “documents and information” near the end; in paragraph (a)(2), substituted “the order” for “all orders” and “the order” for “an order”; substituted “person requesting”

for “party seeking” in paragraph (a)(3); in paragraph (a)(5), substituted “Except as otherwise provided in Code Section 19-11-131, the” for “The” at the beginning, and deleted “agency or” preceding “person” in the middle; substituted “an order of a tribunal of another state or a foreign support order” for “a foreign judgment” in subsection (b); and added subsections (d) and (e).

19-11-162. Filing in Georgia tribunal required for registration; enforcement; modification.

(a) A support order or income-withholding order issued in another state or a foreign support order is registered when the order is filed in the registering tribunal of Georgia.

(b) A registered support order issued in another state or a foreign country is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal in Georgia.

(c) Except as otherwise provided in this part, a tribunal in Georgia shall recognize and enforce, but may not modify, a registered support order if the issuing tribunal had jurisdiction. (Code 1981, § 19-11-162, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, inserted “or a foreign support order” in subsection (a); in subsection (b), inserted “support” and inserted “or a foreign country”; and inserted “support” in subsection (c).

19-11-163. Governing law; statute of limitations; application of procedural and remedial law of Georgia; prospective application of law of other state or foreign country.

(a) Except as otherwise provided in subsection (d) of this Code section, the law of the issuing state or foreign country governs:

(1) The nature, extent, amount, and duration of current payments under a registered support order;

(2) The computation and payment of arrearages and accrual of interest on the arrearages under the support order; and

(3) The existence and satisfaction of other obligations under the support order.

(b) In a proceeding for arrears under a registered support order, the statute of limitation of Georgia or of the issuing state or foreign country, whichever is longer, applies.

(c) A responding tribunal of Georgia shall apply the procedures and remedies of this state to enforce current support and collect arrears and interest due on a support order of another state or a foreign country registered in Georgia.

(d) After a tribunal of Georgia or another state determines which is the controlling order and issues an order consolidating arrears, if any, a tribunal of Georgia shall prospectively apply the law of the state or foreign country issuing the controlling order, including its law on interest on arrears, on current and future support, and on consolidated

arrears. (Code 1981, § 19-11-163, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, substituted the present provisions of subsection (a) for the former provisions, which read: “The law of the issuing state governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the

order.”; in subsection (b), substituted “arrears under a registered support order” for “arrearages” near the beginning, deleted “under the laws” preceding “of Georgia” near the middle, and inserted “or foreign country” near the end; and added subsections (c) and (d).

19-11-164. Notification to nonregistering party and obligor’s employer.

(a) When a support order or income-withholding order issued in another state or a foreign support order is registered, the registering tribunal of Georgia shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(b) A notice must inform the nonregistering party:

(1) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of Georgia;

(2) That a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after notice unless the registered order is under Code Section 19-11-184.2;

(3) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and

(4) Of the amount of any alleged arrearages.

(c) If the registering party asserts that two or more orders are in effect, a notice must also:

(1) Identify the two or more orders and the order alleged by the registering party to be the controlling order and the consolidated arrears, if any;

(2) Notify the nonregistering party of the right to a determination of which is the controlling order;

(3) State that the procedures provided in subsection (b) of this Code section apply to the determination of which is the controlling order; and

(4) State that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.

(d) Upon registration of an income-withholding order for enforcement, the support enforcement agency or the registering tribunal shall notify the obligor’s employer pursuant to Code Sections 19-6-31 through 19-6-33. (Code 1981, § 19-11-164, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, in subsection (a), inserted “or a foreign support order” and “of Georgia” in the first sentence; substituted “A notice” for “The notice” at the beginning of the introductory language of subsection (b); inserted “unless the registered order is

under Code Section 19-11-184.2” at the end of paragraph (b)(2); added present subsection (c); redesignated former subsection (c) as subsection (d); and inserted “the support enforcement agency or” in subsection (d).

19-11-165. Contesting the validity of registered support order by nonregistering party.

(a) A nonregistering party seeking to contest the validity or enforcement of a registered order in Georgia shall request a hearing within the time required by Code Section 19-11-164. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to Code Section 19-11-166.

(b) If the nonregistering party fails to contest the validity or enforcement of the registered support order in a timely manner, the order is confirmed by operation of law.

(c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered support order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time, and place of the hearing. (Code 1981, § 19-11-165, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, substituted “the time required by Code Section 19-11-164” for “20 days after

notice of the registration” at the end of the first sentence of subsection (a); and inserted “support” in subsections (b) and (c).

19-11-166. Burden of proof in contesting validity of registered support order; stays.

(a) A party contesting the validity or enforcement of a registered support order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

(1) The issuing tribunal lacked personal jurisdiction over the contesting party;

(2) The order was obtained by fraud;

(3) The order has been vacated, suspended, or modified by a later order;

(4) The issuing tribunal has stayed the order pending appeal;

(5) There is a defense under the law of Georgia to the remedy sought;

(6) Full or partial payment has been made;

(7) The statute of limitation under Code Section 19-11-163 precludes enforcement of some or all of the alleged arrearages; or

(8) The alleged controlling order is not the controlling order.

(b) If a party presents evidence establishing a full or partial defense under subsection (a) of this Code section, a tribunal may stay enforcement of a registered support order, continue the proceeding to permit production of additional relevant evidence, and issue temporary or other appropriate orders. Any portion of the registered support order which is not in dispute may be enforced by all remedies available under the laws of Georgia.

(c) If the contesting party does not establish a defense under subsection (a) of this Code section to the validity or enforcement of a registered support order, the registering tribunal shall issue an order confirming the order. (Code 1981, § 19-11-166, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, inserted “support” in the introductory language of subsection (a); deleted “or” at the end of paragraph (a)(6); in paragraph (a)(7), inserted “alleged” and added “; or” at the end; added paragraph

(a)(8); in subsection (b), substituted “a registered support order” for “the registered order” in the first sentence, and inserted “support” in the last sentence; and substituted “a registered support order” for “the order” in subsection (c).

19-11-167. Effect of confirmation.

Confirmation of a registered support order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration. (Code 1981, § 19-11-167, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, inserted “support” near the beginning of this Code section.

19-11-168. Petitions for modification.

A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in Georgia in the same manner provided in Code Sections 19-11-160 through 19-11-167 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification. (Code 1981, § 19-11-168, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, substituted “19-11-167” for “19-11-163” in the first sentence.

19-11-169. Enforcement pending modification.

A tribunal of Georgia may enforce a child support order of another state registered for purposes of modification in the same manner as if the order had been issued by a tribunal of Georgia, but the registered support order may be modified only if the requirements of Code Section 19-11-170 or 19-11-172 have been met. (Code 1981, § 19-11-169, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, inserted “support” near the middle and inserted “or 19-11-172” near the end of this Code section.

19-11-170. Requirements for modification; effect on jurisdiction.

(a) If Code Section 19-11-172 does not apply, upon petition a tribunal of Georgia may modify a child support order issued in another state which is registered in Georgia if, after notice and hearing, the tribunal finds that:

(1) The following requirements are met:

(A) Neither the child, nor the obligee who is an individual, nor the obligor resides in the issuing state;

(B) A petitioner who is a nonresident of Georgia seeks modification; and

(C) The respondent is subject to the personal jurisdiction of the tribunal of Georgia; or

(2) This state is the residence of the child or a party who is an individual, is subject to the personal jurisdiction of the tribunal of Georgia, and all of the parties who are individuals have filed consents

in a record in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction.

(b) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state, and the order may be enforced and satisfied in the same manner.

(c) A tribunal in Georgia may not modify any aspect of a child support order that may not be modified under the law of the issuing state, including the duration of the obligation of support. If two or more tribunals have issued child support orders for the same obligor and same child, the order that controls and must be so recognized under the provisions of Code Section 19-11-116 establishes the aspects of the support order which are nonmodifiable.

(d) In a proceeding to modify a child support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal of Georgia.

(e) On issuance of an order by a tribunal of Georgia modifying a child support order issued in another state, the tribunal of Georgia becomes the tribunal having continuing, exclusive jurisdiction.

(f) Notwithstanding subsections (a) through (e) of this Code section and subsection (b) of Code Section 19-11-110, a tribunal of Georgia retains jurisdiction to modify an order issued by a tribunal of Georgia if:

(1) One party resides in another state; and

(2) The other party resides outside the United States. (Code 1981, § 19-11-170, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, substituted the present introductory language of subsection (a) for the former provisions, which read: "After a child support order issued in another state has been registered in Georgia, the responding tribunal of Georgia may modify that order only if Code Section 19-11-172 does not apply and, after notice and hearing, it finds that"; substituted "Neither the child, nor the obligee who is an individual, nor the obligor resides" for "The child, the individual obligee, and the obligor do not reside" in subparagraph (a)(1)(A); in paragraph (a)(2), substituted "This state is the residence of the child or" for "The child, or" at the beginning, sub-

stituted "filed consents in a record" for "filed written consents" near the middle, and deleted "over the order. However, if the issuing state is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under this article, the consent otherwise required of an individual residing in this state is not required for the tribunal to assume jurisdiction to modify the child support order" following "jurisdiction" at the end; in subsection (c), added ", including the duration of the obligation of support" at the end of the first sentence, and inserted "same" in the second sentence; added present subsection (d); redesignated former subsection

(d) as present subsection (e); in subsection substituted “the tribunal” for “a tribunal”;
(e), inserted “by a tribunal of Georgia” and and added subsection (f).

19-11-171. Recognition of modification by another tribunal.

If a child support order issued by a tribunal in Georgia is modified by a tribunal of another state which assumed jurisdiction pursuant to this article, a tribunal of Georgia:

(1) May enforce its order that was modified only as to arrears and interest accruing before the modification;

(2) May provide appropriate relief for violations of its order which occurred before the effective date of the modification; and

(3) Shall recognize the modifying order of the other state, upon registration, for the purpose of enforcement. (Code 1981, § 19-11-171, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, substituted the present provisions of this Code section for the former provisions, which read: “A tribunal in Georgia shall recognize a modification of its earlier child support order by a tribunal of another state which assumed jurisdiction pursuant to this article or a law substantially similar to this article and, upon request, except as otherwise provided in this article, shall:

only as to amounts accruing before the modification;

“(2) Enforce only nonmodifiable aspects of that order;

“(3) Provide other appropriate relief only for violations of that order which occurred before the effective date of the modification; and

“(4) Recognize the modifying order of the other state, upon registration, for the purpose of enforcement.”

“(1) Enforce the order that was modified

19-11-172. Jurisdiction; application of article.

Editor’s notes. — Ga. L. 2013, p. 705, § 1/SB 193, effective July 1, 2013, reenacted this Code section without change.

Refer to bound volume for text of this Code section.

19-11-173. Filing requirement for modified order.

Editor’s notes. — Ga. L. 2013, p. 705, § 1/SB 193, effective July 1, 2013, reenacted this Code section without change.

Refer to bound volume for text of this Code section.

19-11-174. Jurisdiction to modify child support order.

(a) Except as otherwise provided in Code Section 19-11-184.6, if a foreign country lacks or refuses to exercise jurisdiction to modify its child support order pursuant to its laws, a tribunal of Georgia may assume jurisdiction to modify the child support order and bind all individuals subject to the personal jurisdiction of the tribunal whether

the consent to modification of a child support order otherwise required of the individual pursuant to Code Section 19-11-170 has been given or whether the individual seeking modification is a resident of this state or of the foreign country.

(b) An order issued by a tribunal of this state modifying a foreign child support order pursuant to this Code section is the controlling order. (Code 1981, § 19-11-174, enacted by Ga. L. 2013, p. 705, § 1/SB 193.)

Effective date. — This Code section became effective July 1, 2013.

19-11-175. Registration of foreign child support order.

A party or support enforcement agency seeking to modify, or to modify and enforce, a foreign child support order not under the convention may register that order in this state under Code Sections 19-11-160 through 19-11-167 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or at another time. The petition must specify the grounds for modification. (Code 1981, § 19-11-175, enacted by Ga. L. 2013, p. 705, § 1/SB 193.)

Effective date. — This Code section became effective July 1, 2013.

PART 7

DETERMINATION OF PARENTAGE

19-11-180. Definitions.

As used in this part, the term:

(1) “Application” means a request under the convention by an obligee or obligor, or on behalf of a child, made through a central authority for assistance from another central authority.

(2) “Central authority” means the entity designated by the United States or a foreign country described in subparagraph (D) of paragraph (5) of Code Section 19-11-101 to perform the functions specified in the convention.

(3) “Convention support order” means a support order of a tribunal of a foreign country described in subparagraph (D) of paragraph (5) of Code Section 19-11-101.

(4) “Direct request” means a petition filed by an individual in a tribunal of Georgia in a proceeding involving an obligee, obligor, or child residing outside the United States.

(5) “Foreign central authority” means the entity designated by a foreign country described in subparagraph (D) of paragraph (5) of Code Section 19-11-101 to perform the functions specified in the convention.

(6) “Foreign support agreement”:

(A) Means an agreement for support in a record that:

- (i) Is enforceable as a support order in the country of origin;
- (ii) Has been:
 - (I) Formally drawn up or registered as an authentic instrument by a foreign tribunal; or
 - (II) Authenticated by, or concluded, registered, or filed with, a foreign tribunal; and
- (iii) May be reviewed and modified by a foreign tribunal; and

(B) Includes a maintenance arrangement or authentic instrument under the convention.

(7) “United States central authority” means the secretary of the United States Department of Health and Human Services. (Code 1981, § 19-11-180, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, substituted the present provisions of this Code section for the former provisions, which read: “(a) A tribunal of this state may serve as an initiating or responding tribunal in a proceeding brought under this article or a law substantially similar to this article, or the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Recipro-

cal Enforcement of Support Act to determine that the petitioner is a parent of a particular child or to determine that a respondent is a parent of that child.

“(b) In a proceeding to determine parentage, a responding tribunal in Georgia shall apply the procedural and substantive law of this state and the rules of this state on choice of law.”

19-11-181. Applicability of part.

This part applies only to a support proceeding under the convention. In such a proceeding, if a provision of this part is inconsistent with Parts 1 through 6 of this article, this part controls. (Code 1981, § 19-11-181, enacted by Ga. L. 2013, p. 705, § 1/SB 193.)

Effective date. — This Code section became effective July 1, 2013.

19-11-182. Department of Human Services recognized as designated agency.

The Department of Human Services is recognized as the agency designated by the United States central authority to perform specific functions under the convention. (Code 1981, § 19-11-182, enacted by Ga. L. 2013, p. 705, § 1/SB 193.)

Effective date. — This Code section became effective July 1, 2013.

19-11-183. Duties of Department of Human Services; available support proceedings.

(a) In a support proceeding under this part, the Department of Human Services shall:

(1) Transmit and receive applications; and

(2) Initiate or facilitate the institution of a proceeding regarding an application in a tribunal of Georgia.

(b) The following support proceedings are available to an obligee under the convention:

(1) Recognition or recognition and enforcement of a foreign support order;

(2) Enforcement of a support order issued or recognized in Georgia;

(3) Establishment of a support order if there is no existing order, including, if necessary, determination of parentage of a child;

(4) Establishment of a support order if recognition of a foreign support order is refused under paragraph (2), (4), or (9) of subsection (b) of Code Section 19-11-184.3;

(5) Modification of a support order of a tribunal of Georgia; and

(6) Modification of a support order of a tribunal of another state or a foreign country.

(c) The following support proceedings are available under the convention to an obligor against which there is an existing support order:

(1) Recognition of an order suspending or limiting enforcement of an existing support order of a tribunal of Georgia;

(2) Modification of a support order of a tribunal of Georgia; and

(3) Modification of a support order of a tribunal of another state or a foreign country.

(d) A tribunal of Georgia may not require security, bond, or deposit, however described, to guarantee the payment of costs and expenses in proceedings under the convention. (Code 1981, § 19-11-183, enacted by Ga. L. 2013, p. 705, § 1/SB 193.)

Effective date. — This Code section became effective July 1, 2013.

19-11-184. Filing direct requests; entitlement to assistance; preference for simplified and expeditious processes.

(a) A petitioner may file a direct request seeking establishment or modification of a support order or determination of parentage of a child. In the proceeding, the law of Georgia applies.

(b) A petitioner may file a direct request seeking recognition and enforcement of a support order or support agreement. In the proceeding, Code Sections 19-11-184.1 through 19-11-184.8 apply.

(c) In a direct request for recognition and enforcement of a convention support order or foreign support agreement:

(1) A security, bond, or deposit is not required to guarantee the payment of costs and expenses; and

(2) An obligee or obligor that in the issuing country has benefited from free legal assistance is entitled to benefit, at least to the same extent, from any free legal assistance provided for by the law of Georgia under the same circumstances.

(d) A petitioner filing a direct request is not entitled to assistance from the Department of Human Services.

(e) This part does not prevent the application of laws of Georgia that provide simplified, more expeditious rules regarding a direct request for recognition and enforcement of a foreign support order or foreign support agreement. (Code 1981, § 19-11-184, enacted by Ga. L. 2013, p. 705, § 1/SB 193.)

Effective date. — This Code section became effective July 1, 2013.

19-11-184.1. Request for registration.

(a) Except as otherwise provided in this part, a party who is an individual or a support enforcement agency seeking recognition of a convention support order shall register the order in this state as provided in Part 6 of this article.

(b) Notwithstanding Code Sections 19-11-130 and subsection (a) of Code Section 19-11-161, a request for registration of a convention support order must be accompanied by:

(1) A complete text of the support order or an abstract or extract of the support order drawn up by the issuing foreign tribunal, which may be in the form recommended by the Hague Conference on Private International Law;

(2) A record stating that the support order is enforceable in the issuing country;

(3) If the respondent did not appear and was not represented in the proceedings in the issuing country, a record attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard or that the respondent had proper notice of the support order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal;

(4) A record showing the amount of arrears, if any, and the date the amount was calculated;

(5) A record showing a requirement for automatic adjustment of the amount of support, if any, and the information necessary to make the appropriate calculations; and

(6) If necessary, a record showing the extent to which the applicant received free legal assistance in the issuing country.

(c) A request for registration of a convention support order may seek recognition and partial enforcement of the order.

(d) A tribunal of Georgia may vacate the registration of a convention support order without the filing of a contest under Code Section 19-11-184.2 only if, acting on its own motion, the tribunal finds that recognition and enforcement of the order would be manifestly incompatible with public policy.

(e) The tribunal shall promptly notify the parties of the registration or the order vacating the registration of a convention support order. (Code 1981, § 19-11-184.1, enacted by Ga. L. 2013, p. 705, § 1/SB 193.)

Effective date. — This Code section became effective July 1, 2013.

19-11-184.2. Contest of registered convention support order.

(a) Except as otherwise provided in this part, Code Sections 19-11-164 through 19-11-167 apply to a contest of a registered convention support order.

(b) A party contesting a registered convention support order shall file a contest not later than 30 days after notice of the registration, but if the contesting party does not reside in the United States, the contest must be filed not later than 60 days after notice of the registration.

(c) If the nonregistering party fails to contest the registered convention support order by the time specified in subsection (b) of this Code section, the order is enforceable.

(d) A contest of a registered convention support order may be based only on grounds set forth in Code Section 19-11-184.3. The contesting party bears the burden of proof.

(e) In a contest of a registered convention support order, a tribunal of Georgia:

(1) Is bound by the findings of fact on which the foreign tribunal based its jurisdiction; and

(2) May not review the merits of the order.

(f) A tribunal of Georgia deciding a contest of a registered convention support order shall promptly notify the parties of its decision.

(g) A challenge or appeal, if any, does not stay the enforcement of a convention support order unless there are exceptional circumstances. (Code 1981, § 19-11-184.2, enacted by Ga. L. 2013, p. 705, § 1/SB 193.)

Effective date. — This Code section became effective July 1, 2013.

19-11-184.3. Grounds for refusal of recognition and enforcement of registered convention support order.

(a) Except as otherwise provided in subsection (b) of this Code section, a tribunal of Georgia shall recognize and enforce a registered convention support order.

(b) The following grounds are the only grounds on which a tribunal of Georgia may refuse recognition and enforcement of a registered convention support order:

(1) Recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard;

(2) The issuing tribunal lacked personal jurisdiction consistent with Code Section 19-11-110;

(3) The order is not enforceable in the issuing country;

(4) The order was obtained by fraud in connection with a matter of procedure;

(5) A record transmitted in accordance with Code Section 19-11-184.1 lacks authenticity or integrity;

(6) A proceeding between the same parties and having the same purpose is pending before a tribunal of Georgia and that proceeding was the first to be filed;

(7) The order is incompatible with a more recent support order involving the same parties and having the same purpose if the more recent support order is entitled to recognition and enforcement under this article in Georgia;

(8) Payment, to the extent alleged arrears have been paid in whole or in part;

(9) In a case in which the respondent neither appeared nor was represented in the proceeding in the issuing foreign country:

(A) If the law of that country provides for prior notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or

(B) If the law of that country does not provide for prior notice of the proceedings, the respondent did not have proper notice of the order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal; or

(10) The order was made in violation of Code Section 19-11-184.6.

(c) If a tribunal of Georgia does not recognize a convention support order under paragraph (2), (4), or (9) of subsection (b) of this Code section:

(1) The tribunal may not dismiss the proceeding without allowing a reasonable time for a party to request the establishment of a new convention support order; and

(2) The Department of Human Services shall take all appropriate measures to request a child support order for the obligee if the application for recognition and enforcement was received under Code Section 19-11-183. (Code 1981, § 19-11-184.3, enacted by Ga. L. 2013, p. 705, § 1/SB 193.)

Effective date. — This Code section became effective July 1, 2013.

19-11-184.4. Option to enforce portions of convention support order.

If a tribunal of Georgia does not recognize and enforce a convention support order in its entirety, it shall enforce any severable part of the order. An application or direct request may seek recognition and partial enforcement of a convention support order. (Code 1981, § 19-11-184.4, enacted by Ga. L. 2013, p. 705, § 1/SB 193.)

Effective date. — This Code section became effective July 1, 2013.

19-11-184.5. Recognition and enforcement of foreign support agreement.

(a) Except as otherwise provided in subsections (c) and (d) of this Code section, a tribunal of Georgia shall recognize and enforce a foreign support agreement registered in this state.

(b) An application or direct request for recognition and enforcement of a foreign support agreement must be accompanied by:

(1) A complete text of the foreign support agreement; and

(2) A record stating that the foreign support agreement is enforceable as an order of support in the issuing country.

(c) A tribunal of Georgia may vacate the registration of a foreign support agreement only if, acting on its own motion, the tribunal finds that recognition and enforcement would be manifestly incompatible with public policy.

(d) In a contest of a foreign support agreement, a tribunal of Georgia may refuse recognition and enforcement of the agreement if it finds:

(1) Recognition and enforcement of the agreement is manifestly incompatible with public policy;

(2) The agreement was obtained by fraud or falsification;

(3) The agreement is incompatible with a support order involving the same parties and having the same purpose in this state, another state, or a foreign country if the support order is entitled to recognition and enforcement under this article in Georgia; or

(4) The record submitted under subsection (b) of this Code section lacks authenticity or integrity.

(e) A proceeding for recognition and enforcement of a foreign support agreement must be suspended during the pendency of a challenge to or appeal of the agreement before a tribunal of another state or a foreign

country. (Code 1981, § 19-11-184.5, enacted by Ga. L. 2013, p. 705, § 1/SB 193.)

Effective date. — This Code section became effective July 1, 2013.

19-11-184.6. Modification of convention child support order.

(a) A tribunal of Georgia may not modify a convention child support order if the obligee remains a resident of the foreign country where the support order was issued unless:

(1) The obligee submits to the jurisdiction of a tribunal of Georgia, either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity; or

(2) The foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order.

(b) If a tribunal of Georgia does not modify a convention child support order because the order is not recognized in this state, subsection (c) of Code Section 19-11-184.3 applies. (Code 1981, § 19-11-184.6, enacted by Ga. L. 2013, p. 705, § 1/SB 193.)

Effective date. — This Code section became effective July 1, 2013.

19-11-184.7. Personal information.

Personal information gathered or transmitted under this part may be used only for the purposes for which it was gathered or transmitted. (Code 1981, § 19-11-184.7, enacted by Ga. L. 2013, p. 705, § 1/SB 193.)

Effective date. — This Code section became effective July 1, 2013.

19-11-184.8. Language.

A record filed with a tribunal of Georgia under this part must be in the original language and, if not in English, must be accompanied by an English translation verified by the translator. (Code 1981, § 19-11-184.8, enacted by Ga. L. 2013, p. 705, § 1/SB 193.)

Effective date. — This Code section became effective July 1, 2013.

PART 8

INTERSTATE RENDITION

19-11-185. “Governor” defined; authority.

(a) For purposes of this part, the term “governor” includes an individual performing the functions of governor or the executive authority of a state covered by this article.

(b) The Governor of this state may:

(1) Demand that the governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to provide for the support of an obligee; or

(2) On the demand of the governor of another state, surrender an individual found in this state who is charged criminally in the other state with having failed to provide for the support of an obligee.

(c) A provision for extradition of individuals not inconsistent with this article applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom. (Code 1981, § 19-11-185, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, substituted “of the governor” for “by the governor” at the beginning of paragraph (b)(2).

19-11-186. Prosecutor’s duties upon request by governor; rendition.

(a) Before making a demand that the governor of another state surrender an individual charged criminally in this state with having failed to provide for the support of an obligee, the Governor of this state may require a prosecutor of this state to demonstrate that at least 90 days previously the obligee had initiated proceedings for support pursuant to this article or that the proceeding would be of no avail.

(b) If, under this article or a law substantially similar to this article, the governor of another state makes a demand that the Governor of this state surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the Governor of this state may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the Governor of this state may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the Governor of this state may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the Governor of this state may decline to honor the demand if the individual is complying with the support order. (Code 1981, § 19-11-186, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, deleted “the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act,” preceding “the governor” in the first sentence of subsection (b).

PART 9

MISCELLANEOUS PROVISIONS

19-11-190. Construction of article; uniformity.

In applying and construing this article, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. (Code 1981, § 19-11-190, enacted by Ga. L. 1997, p. 1613, § 33; Ga. L. 2013, p. 705, § 1/SB 193.)

The 2013 amendment, effective July 1, 2013, substituted the present provisions of this Code section for the former provisions, which read: “This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the article among states enacting it.”

19-11-190.1. Effective date.

This article applies to proceedings begun on or after July 1, 2013, to establish a support order or determine parentage of a child or to register, recognize, enforce, or modify a prior support order, determination, or agreement, whenever issued or entered. (Code 1981, § 19-11-190.1, enacted by Ga. L. 2013, p. 705, § 1/SB 193.)

Effective date. — This Code section became effective July 1, 2013.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2013, “on or after July 1, 2013,” was substituted for “on or after the effective date of this Code section” near the beginning of this Code section.

19-11-191. Severability.

Editor’s notes. — Ga. L. 2013, p. 705, § 1/SB 193, effective July 1, 2013, reenacted this Code section without change. Refer to bound volume for text of this Code section.

CHAPTER 13

FAMILY VIOLENCE

Article 2

Family Violence Shelters

Sec.

19-13-20. Definitions.

Article 3

State Commission on Family
Violence19-13-32. Membership; terms; filling of
vacancies; officers.

Cross references. — Certain communications privileged, § 24-5-501. Communications between victim of family violence or sexual assault and agents providing services to such victim, § 24-5-509.

ARTICLE 1

GRANTING OF RELIEF BY SUPERIOR COURTS

19-13-1. “Family violence” defined.

JUDICIAL DECISIONS

Family violence not likely to resume justifying modification of protective order. — Restrained party who seeks termination of a family violence permanent protective order must prove by a preponderance of the evidence that a material change in circumstances has occurred, such that the resumption of family violence is not likely and justice would be served by termination of the order and in reviewing cases such as this, a court should look to the totality of the circumstances. Furthermore, circumstances a court should consider when considering modifying a family violence permanent protective order include: the present nature of the parties’ relationship; the restrained party’s history of compliance with the protective order and history of violence; the restrained party’s efforts to

undergo therapy; the age and health of the restrained party; any undue hardships suffered as a result of the order; and, the existence and nature of any objections the victim has to termination. *Mandt v. Lovell*, 293 Ga. 807, 750 S.E.2d 134 (2013).

Modification of permanent protective order. — Appellate court properly upheld the modification of a permanent protection order issued in a family violence matter between parents because O.C.G.A. § 19-13-4(c) contemplated that the duration of such orders could be modified based on changing conditions and circumstances, and the father sufficiently alleged such changed circumstances, including that neither party had custody of the child. *Mandt v. Lovell*, 293 Ga. 807, 750 S.E.2d 134 (2013).

19-13-3. Filing of petition seeking relief from family violence; granting of temporary relief ex parte; hearing; dismissal of petition upon failure to hold hearing; procedural advice for victims.

Law reviews. — For comment, “Engendering Fairness in Domestic Violence Arrests: Improving Police Accountability

Through the Equal Protection Clause,” see 60 Emory L.J. 1011 (2011).

JUDICIAL DECISIONS

Burden of proof.

Trial court abused the court’s discretion by issuing a protective order against a lessee because a lessor did not meet the burden under O.C.G.A. §§ 16-5-94(e) and 19-13-3(c) of showing that the lessee committed the offense of stalking, O.C.G.A. § 16-5-90(a)(1); other than the lessor’s own testimony, the lessor offered no proof that the lessee and a former business associate were acting in concert against the lessor or that their alleged joint activities were of the type that would support a protective order based on the offense of stalking. *Martin v. Woodyard*, 313 Ga. App. 797, 723 S.E.2d 293 (2012).

“Reasonably recent” act of violence not required. — Appellate court found that under O.C.G.A. § 19-13-3 there was no requirement that any past act of family violence alleged in the petition be “reasonably recent.” By requiring the wife to show a “reasonably recent” act of family violence by the husband, the court below abused the court’s discretion. *Lewis v. Lewis*, 316 Ga. App. 67, 728 S.E.2d 741 (2012).

Protective order under O.C.G.A. § 16-5-94.

Imposition of a stalking protective order against the former boyfriend was inappropriate under O.C.G.A. §§ 16-5-90(a)(1), 16-5-94(e), and 19-13-3(c) because the evidence admitted at the hearing was clearly insufficient to establish the necessary “pattern” of harassing and intimidat-

ing behavior against the former girlfriend. Even assuming that an incident in the parking lot constituted the requisite contact of an intimidating or harassing nature, the only other evidence presented was that the parties would sometimes be in the same place at the school, which was a place that both had the right to be. *Ramsey v. Middleton*, 310 Ga. App. 300, 713 S.E.2d 428 (2011).

Expiration of temporary order. — Temporary protective order (TPO) issued under O.C.G.A. § 16-5-94 stood dismissed as a matter of law after 30 days without a hearing pursuant to O.C.G.A. § 19-13-3(c); after that date, the superior court lacked the power to enforce the TPO, as provided in O.C.G.A. § 19-13-4(d), or order the parties to comply with a settlement agreement. Although the parties allegedly agreed to continue the hearing, there was no showing in the record of such consent. *Peebles v. Claxton*, 755 S.E.2d 861, 2014 Ga. App. LEXIS 113 (2014).

Jury instruction on family violence protective order violation erroneous.

— Defendant’s conviction for violating a family violence protective order as a lesser included offense of aggravated stalking was reversed on appeal because the defendant was not indicted for the family violence protective order violation; thus, the trial court erred in instructing the jury on the lesser offense. *Edgecomb v. State*, 319 Ga. App. 804, 738 S.E.2d 645 (2013).

Cited in *Perlman v. Perlman*, 318 Ga. App. 731, 734 S.E.2d 560 (2012).

19-13-4. Protective orders and consent agreements; contents; issuing copy of order to sheriff; expiration; enforcement.

Law reviews. — For annual survey of law on domestic relations, see 62 Mercer L. Rev. 105 (2010).

JUDICIAL DECISIONS

Expiration of temporary order. — Temporary protective order (TPO) issued under O.C.G.A. § 16-5-94 stood dismissed as a matter of law after 30 days without a hearing pursuant to O.C.G.A. § 19-13-3(c); after that date, the superior court lacked the power to enforce the TPO, as provided in O.C.G.A. § 19-13-4(d), or order the parties to comply with a settlement agreement. Although the parties allegedly agreed to continue the hearing, there was no showing in the record of such consent. *Peebles v. Claxton*, 755 S.E.2d 861, 2014 Ga. App. LEXIS 113 (2014).

History of unfounded allegations of abuse justified dismissal of petition. — Order dismissing the father's petition for family violence protective orders on behalf of the children against the mother was upheld because much of the evidence of what the children said about the mother came from the testimony of the father, who had a history of making unfounded allegations of child abuse against former wives, including the mother. *Perlman v. Perlman*, 318 Ga. App. 731, 734 S.E.2d 560 (2012).

Modification of permanent protective order. — Appellate court properly upheld the modification of a permanent protection order issued in a family violence matter between parents because O.C.G.A. § 19-13-4(c) contemplated that the duration of such orders could be modified based on changing conditions and circumstances, and the father sufficiently alleged such changed circumstances, including that neither party had custody of the child. *Mandt v. Lovell*, 293 Ga. 807, 750 S.E.2d 134 (2013).

Text of O.C.G.A. § 19-13-4(c) contemplates that the duration of family violence protective orders may be modified based on changing conditions and circumstances. Thus, a restrained party who seeks termination of a family violence permanent protective order must prove by a preponderance of the evidence that a material change in circumstances has occurred, such that the resumption of family violence is not likely and justice would be served by termination of the order and in reviewing cases such as this, a court should look to the totality of the circumstances. *Mandt v. Lovell*, 293 Ga. 807, 750 S.E.2d 134 (2013).

Transmission of order to Protective Order Registry mandatory. — Although a one-year protective order against a husband had expired at the time of his appeal, rendering certain evidentiary issues moot, other issues which tended to evade review were considered. The trial court did not err in transmitting the protective order to the Georgia Protective Order Registry as required by O.C.G.A. § 19-13-4. *Birchby v. Carboy*, 311 Ga. App. 538, 716 S.E.2d 592 (2011).

Jury instruction on family violence protective order violation erroneous. — Defendant's conviction for violating a family violence protective order as a lesser included offense of aggravated stalking was reversed on appeal because the defendant was not indicted for the family violence protective order violation; thus, the trial court erred in instructing the jury on the lesser offense. *Edgecomb v. State*, 319 Ga. App. 804, 738 S.E.2d 645 (2013).

Cited in *Elgin v. Swann*, 315 Ga. App. 809, 728 S.E.2d 328 (2012).

ARTICLE 2

FAMILY VIOLENCE SHELTERS

19-13-20. Definitions.

As used in this article, the term:

(1) “Department” means the Department of Human Services.

(2) “Family or household members” means spouses, parents and children, or other persons related by consanguinity or affinity and occupying a common domicile.

(3) “Family violence” means the occurrence of one of the following acts between family or household members who reside together:

(A) Attempting to cause or causing bodily injury or serious bodily injury with or without a deadly weapon; or

(B) By physical menace, placing another in fear of imminent serious bodily injury.

(4) “Family violence program” means any program whose primary stated purpose is to provide services to victims of family violence. A family violence program may be but is not required to be associated with a family violence shelter.

(5) “Family violence shelter” means a facility approved by the department for the purpose of receiving, on a temporary basis, persons who are subject to family violence. Family violence shelters are distinguished from shelters operated for detention or placement of children only, as provided in subsection (c) of Code Section 15-11-135 and subsection (a) of Code Section 15-11-504. (Ga. L. 1981, p. 663, § 1; Ga. L. 1983, p. 521, § 1; Ga. L. 1988, p. 13, § 19; Ga. L. 1988, p. 1287, § 1; Ga. L. 1996, p. 819, § 1; Ga. L. 2000, p. 20, § 14; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2013, p. 294, § 4-30/HB 242.)

The 2013 amendment, effective January 1, 2014, substituted “subsection (c) of Code Section 15-11-135 and subsection (a) of Code Section 15-11-504” for “subsection (a) of Code Section 15-11-48” in the last sentence of paragraph (5). See editor’s note for applicability.

Editor’s notes. — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: “This Act shall become effective on January 1, 2014, and

shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any

prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions.”

ARTICLE 3

STATE COMMISSION ON FAMILY VIOLENCE

19-13-30. State Commission on Family Violence.

JUDICIAL DECISIONS

Cited in *Bell v. State*, 323 Ga. App. 751, 748 S.E.2d 114 (2013).

19-13-32. Membership; terms; filling of vacancies; officers.

(a) The State Commission on Family Violence shall consist of 37 members:

(1) Three ex officio members shall be the director of the Division of Family and Children Services of the Department of Human Services, the director of Women’s Health Services in the Department of Public Health, and the Attorney General;

(2) Three members shall be members of the House of Representatives and shall be appointed by the Speaker of the House;

(3) Three members shall be members of the Senate and shall be appointed by the President of the Senate;

(4) The remaining members shall be appointed by the Governor as follows:

(A) One judge from each judicial administrative district;

(B) Three advocates for battered women recommended by groups which have addressed the problem of family violence;

(C) One person with expertise and interest regarding family violence involving persons who are 60 years of age or older;

(D) One person with expertise and interest regarding family violence involving children; and

(E) One representative from each of the following:

(i) The Administrative Office of the Courts;

(ii) The Georgia Peace Officer Standards and Training Council;

(iii) The Georgia Association of Chiefs of Police;

- (iv) The District Attorneys Association of Georgia;
- (v) The State Board of Pardons and Paroles;
- (vi) The probation system;
- (vii) The Georgia Sheriffs' Association;
- (viii) The Criminal Justice Coordinating Council;
- (ix) The Solicitors Association of Georgia;
- (x) The legal aid community;
- (xi) The academic community;
- (xii) Men Stopping Violence; and
- (xiii) A former victim of domestic violence.

(b) The Governor, Speaker of the House, and President of the Senate shall appoint individuals who are specially qualified to serve on the commission by reason of their experience and knowledge of family violence issues.

(c) Members serving on July 1, 1996, or persons appointed to complete the unexpired terms of members serving on July 1, 1996, shall complete the terms for which they were appointed. The term of appointment shall be three years for initial successors to members appointed in accordance with the following provisions of subsection (a) of this Code section: paragraph (2) and divisions (ii), (iv), (vi), (viii), (x), and (xii) of subparagraph (E) of paragraph (4). The term of appointment shall be three years for the initial members appointed in accordance with subparagraphs (a)(4)(C) and (a)(4)(D) of this Code section. Initial successors to judicial members appointed to represent even-numbered judicial administrative districts shall be appointed for terms of three years. Two of the initial successors for members appointed in accordance with subparagraph (a)(4)(B) this Code section shall be appointed for terms of three years. The term of appointment shall be two years for initial successors to all other members except those serving ex officio. The letter of appointment shall set out the term for which each member is appointed. Thereafter, each member shall be appointed for a term of two years, and no member may serve more than two consecutive terms. Each member shall serve until the date his or her successor is appointed. All vacancies shall be filled for the unexpired term by an appointee of the original appointing official.

(d) The commission shall elect a chairperson, vice chairperson, and a secretary from among its members for terms of two years, and any member shall be eligible for successive election to such office by the commission. (Code 1981, § 19-13-32, enacted by Ga. L. 1992, p. 1810, § 1; Ga. L. 1995, p. 1186, § 2; Ga. L. 1996, p. 449, § 2; Ga. L. 2009, p.

453, § 1-17/HB 228; Ga. L. 2011, p. 705, § 6-1/HB 214; Ga. L. 2012, p. 200, § 1/HB 733.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Division of Public Health” of the Department of Community Health” in paragraph (a)(1).
The 2012 amendment, effective April

16, 2012, added the next-to-last sentence of subsection (c).
Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

ARTICLE 4

FAMILY VIOLENCE AND STALKING PROTECTIVE ORDER
REGISTRY

19-13-53. Standardized forms; timing of transmission of information and data entry; responsibility of sheriff’s office.

JUDICIAL DECISIONS

Transmission of order to Protective Order Registry mandatory. — Although a one-year protective order against a husband had expired at the time of his appeal, rendering certain evidentiary issues moot, other issues

which tended to evade review were considered. The trial court did not err in transmitting the protective order to the Georgia Protective Order Registry as required by O.C.G.A. § 19-13-4. *Birchby v. Carboy*, 311 Ga. App. 538, 716 S.E.2d 592 (2011).

CHAPTER 15

CHILD ABUSE

Sec.
19-15-1. Definitions.
19-15-2. Protocol committee on child abuse; written protocol; training of members; written sexual abuse and exploitation protocol.
19-15-3. County review committee; chairperson; eligible deaths for

Sec.

19-15-4. review; notification to coroner; reporting to chairperson; committee review.
19-15-6. Georgia Child Fatality Review Panel.
Use of information and records of protocol committees, review committees, and panels.

Cross references. — Physician may take or retain temporary protective custody, § 15-11-131.

19-15-1. Definitions.

As used in this chapter, the term:

- (1) “Abused” means subjected to child abuse.
- (2) “Child” means any person under 18 years of age.
- (3) “Child abuse” means:

(A) Physical injury or death inflicted upon a child by a parent or caretaker thereof by other than accidental means; provided, however, physical forms of discipline may be used as long as there is no physical injury to the child;

(B) Neglect or exploitation of a child by a parent or caretaker thereof;

(C) Sexual abuse of a child; or

(D) Sexual exploitation of a child.

(4) “Child protection professional” means any person who is employed by the state or a political subdivision of the state as a law enforcement officer, school teacher, school administrator, or school counselor or who is employed to render services to children by the Department of Public Health, the Department of Behavioral Health and Developmental Disabilities, or the Department of Human Services or any county board of health, community service board, or county department of family and children services.

(5) Reserved.

(6) “Investigation” in the context of child death includes all of the following:

(A) A post-mortem examination which may be limited to an external examination or may include an autopsy;

(B) An inquiry by law enforcement agencies having jurisdiction into the circumstances of the death, including a scene investigation and interview with the child’s parents, guardian, or caretaker and the person who reported the child’s death;

(C) A review of information regarding the child and family from relevant agencies, professionals, and providers of medical care.

(7) “Panel” means the Georgia Child Fatality Review Panel established pursuant to Code Section 19-15-4.

(8) “Protocol committee” means a multidisciplinary, multiagency committee established for a county pursuant to Code Section 19-15-2.

(9) "Report" means a standardized form designated by the panel which is required for collecting data on child fatalities reviewed by local child fatality review committees.

(10) "Review committee" means a multidisciplinary, multiagency child fatality review committee established for a county or circuit pursuant to Code Section 19-15-3.

(11) "Sexual abuse" means a person's employing, using, persuading, inducing, enticing, or coercing any minor who is not that person's spouse to engage in any act which involves:

(A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(B) Bestiality;

(C) Masturbation;

(D) Lewd exhibition of the genitals or pubic area of any person;

(E) Flagellation or torture by or upon a person who is nude;

(F) Condition of being fettered, bound, or otherwise physically restrained on the part of a person who is nude;

(G) Physical contact in an act of apparent sexual stimulation or gratification with any person's clothed or unclothed genitals, pubic area, or buttocks or with a female's clothed or unclothed breasts;

(H) Defecation or urination for the purpose of sexual stimulation; or

(I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.

"Sexual abuse" shall not include consensual sex acts involving persons of the opposite sex when the sex acts are between minors or between a minor and an adult who is not more than three years older than the minor. This provision shall not be deemed or construed to repeal any law concerning the age or capacity to consent.

(12) "Sexual exploitation" means conduct by any person who allows, permits, encourages, or requires that child to engage in:

(A) Prostitution, as defined in Code Section 16-6-9; or

(B) Sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct, as defined in Code Section 16-12-100. (Code 1981, § 19-1-1, enacted by Ga. L. 1990, p. 1785, § 1; Code 1981, § 19-15-1, as redesignated by Ga. L. 1991, p. 94, § 19; Ga. L. 1993, p. 1695, § 2; Ga. L. 1993, p. 1941, § 1; Ga. L.

2001, p. 1158, § 1; Ga. L. 2009, p. 453, § 2-8/HB 228; Ga. L. 2009, p. 733, § 2/SB 69; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2014, p. 34, § 2-3/SB 365.)

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in paragraph (4).

The 2014 amendment, effective July 1, 2014, substituted “Reserved” for the former provisions of paragraph (5), which read: “‘Eligible deaths’ means deaths meeting the criteria for review by a county child fatality review committee including deaths resulting from Sudden Infant Death Syndrome, unintentional injuries, intentional injuries, medical conditions when unexpected or when unattended by a physician, or any manner that is suspicious or unusual.”; deleted the former last sentence of paragraph (7), which read: “The panel oversees the local child fatality review process and reports to the Governor on the incidence of child deaths with recommendations for prevention.”; in paragraph (8), deleted “child abuse protocol” following “multiagency” in the middle of the first sentence and deleted the former last sentence, which read: “The protocol committee is charged with develop-

ing local protocols to investigate and prosecute alleged cases of child abuse.”; and deleted the former last sentence from paragraph (10), which read: “The review committee is charged with reviewing all eligible child deaths to determine manner and cause of death and if the death was preventable.”

Editor’s notes. — Ga. L. 2014, p. 34, § 2-1/SB 365, not codified by the General Assembly, provides that: “This part shall be known and may be cited as the ‘Journey Ann Cowart Act.’”

Ga. L. 2014, p. 34, § 2-9/SB 365, not codified by the General Assembly, provides that: “It is the intent of the General Assembly to provide for transparency relative to investigations involving child abuse and child fatalities in order to best protect the children of this state. The General Assembly finds that more disclosure of information may be necessary when a child is deceased. The General Assembly intends that agencies and departments of this state share data in order to conduct research for the purpose of preventing child fatalities in this state.”

19-15-2. Protocol committee on child abuse; written protocol; training of members; written sexual abuse and exploitation protocol.

(a) Each county shall be required to establish a protocol for the investigation and prosecution of alleged cases of child abuse as provided in this Code section.

(b) The chief superior court judge of the circuit in which the county is located shall establish a protocol committee as provided in subsection (c) of this Code section and shall appoint an interim chairperson who shall preside over the first meeting, and the chief superior court judge shall appoint persons to fill any vacancies on the protocol committee. Thus established, the protocol committee shall thereafter elect a chairperson from its membership. The protocol committee shall be charged with developing local protocols for the investigation and prosecution of alleged cases of child abuse.

(c)(1) Each of the following individuals, agencies, and entities shall designate a representative to serve on the protocol committee:

- (A) The sheriff;
- (B) The county department of family and children services;
- (C) The district attorney for the judicial circuit;
- (D) The juvenile court judge;
- (E) The chief magistrate;
- (F) The county board of education;
- (G) The county mental health organization;
- (H) The chief of police of a county in counties which have a county police department;
- (I) The chief of police of the largest municipality in the county;
- (J) The county public health department, which shall designate a physician to serve on the protocol committee; and
- (K) The coroner or county medical examiner.

(2) In addition to the representatives serving on the protocol committee as provided for in paragraph (1) of this subsection, the chief superior court judge shall designate a representative from a local citizen or advocacy group which focuses on child abuse awareness and prevention.

(3) If any designated agency fails to carry out its duties relating to participation on the protocol committee, the chief superior court judge of the circuit may issue an order requiring the participation of such agency. Failure to comply with such order shall be cause for punishment as for contempt of court.

(d) Each protocol committee shall elect or appoint a chairperson who shall be responsible for ensuring that written protocol procedures are followed by all agencies. Such person can be independent of agencies listed in paragraph (1) of subsection (c) of this Code section. The protocol committee may appoint such additional members as necessary and proper to accomplish the purposes of the protocol committee.

(e) The protocol committee shall adopt a written protocol which shall be filed with the Division of Family and Children Services of the Department of Human Services and the panel, a copy of which shall be furnished to each agency in the county handling the cases of abused children. The protocol shall be a written document outlining in detail the procedures to be used in investigating and prosecuting cases arising from alleged child abuse and the methods to be used in coordinating treatment programs for the perpetrator, the family, and the child. The protocol shall also outline procedures to be used when child abuse occurs in a household where there is violence between past or present

spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons living or formerly living in the same household. The protocol adopted shall not be inconsistent with the policies and procedures of the Division of Family and Children Services of the Department of Human Services.

(f) The purpose of the protocol shall be to ensure coordination and cooperation between all agencies involved in a child abuse case so as to increase the efficiency of all agencies handling such cases, to minimize the stress created for the allegedly abused child by the legal and investigatory process, and to ensure that more effective treatment is provided for the perpetrator, the family, and the child, including counseling.

(g) Upon completion of the writing of the protocol, the protocol committee shall continue in existence and shall meet at least semiannually for the purpose of evaluating the effectiveness of the protocol and appropriately modifying and updating the same.

(h) Each protocol committee shall adopt or amend its written protocol to specify the circumstances under which law enforcement officers shall and shall not be required to accompany investigators from the county department of family and children services when these investigators investigate reports of child abuse. In determining when law enforcement officers shall and shall not accompany investigators, the protocol committee shall consider the need to protect the alleged victim and the need to preserve the confidentiality of the report. Each protocol committee shall establish joint work efforts between the law enforcement and investigative agencies in child abuse investigations. The adoption or amendment of the protocol shall also describe measures which can be taken within the county to prevent child abuse and shall be filed with and furnished to the same entities with or to which an original protocol is required to be filed or furnished. The protocol shall be further amended to specify procedures to be adopted by the protocol committee to ensure that written protocol procedures are followed.

(i) The protocol committee shall issue a report no later than the first day of July each year. Such report shall evaluate the extent to which investigations of child abuse during the 12 months prior to the report have complied with the protocols of the protocol committee, recommend measures to improve compliance, and describe which measures taken within the county to prevent child abuse have been successful. The report shall be transmitted to the county governing authority, the fall term grand jury of the judicial circuit, the panel, and the chief superior court judge.

(j) Each member of each protocol committee shall receive appropriate training within 12 months after his or her appointment. The Office

of the Child Advocate for the Protection of Children shall provide such training.

(k) The protocol committee shall adopt a written sexual abuse and sexual exploitation protocol which shall be filed with the Division of Family and Children Services of the Department of Human Services and the Office of the Child Advocate for the Protection of Children, a copy of which shall be furnished to each agency in the county handling the cases of sexually abused or exploited children. The sexual abuse and sexual exploitation protocol shall be a written document outlining in detail the procedures to be used in investigating and prosecuting cases arising from alleged sexual abuse and sexual exploitation and the procedures to be followed concerning the obtainment of and payment for sexual assault examinations. Each protocol committee shall adopt or amend its written sexual abuse and sexual exploitation protocol. The sexual abuse and sexual exploitation protocol adopted shall be consistent with the policies and procedures of the Division of Family and Children Services of the Department of Human Services. A sexual abuse and sexual exploitation protocol is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. Such protocol shall not limit or otherwise restrict a prosecuting attorney in the exercise of his or her discretion nor in the exercise of any otherwise lawful litigative prerogatives. (Code 1981, § 19-1-1, enacted by Ga. L. 1987, p. 1065, § 1; Ga. L. 1988, p. 474, § 1; Code 1981, § 19-1-2, as redesignated by Ga. L. 1990, p. 1785, § 1; Code 1981, § 19-15-2, as redesignated by Ga. L. 1991, p. 94, § 19; Ga. L. 1993, p. 1695, § 2; Ga. L. 1993, p. 1941, § 1; Ga. L. 1994, p. 97, § 19; Ga. L. 1998, p. 609, § 1; Ga. L. 1999, p. 81, § 19; Ga. L. 2001, p. 1158, § 1; Ga. L. 2003, p. 395, § .5; Ga. L. 2004, p. 466, § 4; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2010, p. 286, § 14/SB 244; Ga. L. 2014, p. 34, § 2-4/SB 365.)

The 2014 amendment, effective July 1, 2014, rewrote this Code section.

Editor's notes. — Ga. L. 2014, p. 34, § 2-1/SB 365, not codified by the General Assembly, provides that: "This part shall be known and may be cited as the 'Journey Ann Cowart Act.'"

Ga. L. 2014, p. 34, § 2-9/SB 365, not codified by the General Assembly, provides that: "It is the intent of the General Assembly to provide for transparency rel-

ative to investigations involving child abuse and child fatalities in order to best protect the children of this state. The General Assembly finds that more disclosure of information may be necessary when a child is deceased. The General Assembly intends that agencies and departments of this state share data in order to conduct research for the purpose of preventing child fatalities in this state."

19-15-3. County review committee; chairperson; eligible deaths for review; notification to coroner; reporting to chairperson; committee review.

(a)(1) Each county shall establish a local review committee as provided in this Code section. The review committee shall be charged with reviewing all deaths as set forth in subsection (e) of this Code section to determine manner and cause of death and if the death was preventable. The chief superior court judge of the circuit in which the county is located shall establish a review committee composed of, but not limited to, the following members:

- (A) The county medical examiner or coroner;
- (B) The district attorney or his or her designee;
- (C) A county department of family and children services representative;
- (D) A local law enforcement representative;
- (E) The sheriff or county police chief or his or her designee;
- (F) A juvenile court representative;
- (G) A county public health department representative; and
- (H) A county mental health representative.

(2) The district attorney or his or her designee shall serve as the chairperson to preside over all meetings.

(b) Review committee members shall recommend whether to establish a review committee for that county alone or establish a review committee with and for the counties within that judicial circuit.

(c) The chief superior court judge shall appoint persons to fill any vacancies on the review committee should the membership fail to do so.

(d) If any designated agency fails to carry out its duties relating to participation on the review committee, the chief superior court judge of the circuit or any superior court judge who is a member of the panel shall issue an order requiring the participation of such agency. Failure to comply with such order shall be cause for punishment as for contempt of court.

(e) Deaths eligible for review by review committees are all deaths of children ages birth through 17 as a result of:

- (1) Sudden Infant Death Syndrome;
- (2) Any unexpected or unexplained conditions;
- (3) Unintentional injuries;

- (4) Intentional injuries;
- (5) Sudden death when the child is in apparent good health;
- (6) Any manner that is suspicious or unusual;

(7) Medical conditions when unattended by a physician. For the purpose of this paragraph, no person shall be deemed to have died unattended when the death occurred while the person was a patient of a hospice licensed under Article 9 of Chapter 7 of Title 31;

(8) Serving as an inmate of a state hospital or a state, county, or city penal institution; or

- (9) Child abuse.

(f) It shall be the duty of any law enforcement officer, medical personnel, or other person having knowledge of the death of a child to immediately notify the coroner or medical examiner of the county wherein the body is found or death occurs.

(g) If the death of a child occurs outside the child's county of residence, it shall be the duty of the medical examiner or coroner in the county where the child died to notify the medical examiner or coroner in the county of the child's residence. It shall be the duty of such medical examiner or coroner to provide the protocol committee of the county of such child's residence with copies of all information and reports required by subsections (i) and (j) of this Code section.

(h) When a county medical examiner or coroner receives a report regarding the death of any child, he or she shall within 48 hours of the death notify the chairperson of the review committee for the county or circuit in which such child resided at the time of death.

(i) The coroner or county medical examiner shall review the findings regarding the cause and manner of death for each child death report received and respond as follows:

(1) If the death does not meet the criteria for review pursuant to subsection (e) of this Code section, the coroner or county medical examiner shall sign the form designated by the panel stating that the death does not meet the criteria for review. He or she shall forward the form and findings, within seven days of the child's death, to the chairperson of the review committee for the county or circuit of the child's residence; or

(2) If the death meets the criteria for review pursuant to subsection (e) of this Code section, the coroner or county medical examiner shall complete and sign the form designated by the panel stating the death meets the criteria for review. He or she shall forward the form and findings, within seven days of the child's death, to the chairper-

son of the review committee for the county or circuit of the child's residence.

(j) When the chairperson of a review committee receives a report from the coroner or medical examiner regarding the death of a child, such chairperson shall review the report and findings regarding the cause and manner of the child's death and respond as follows:

(1) If the report indicates the child's death does not meet the criteria for review and the chairperson agrees with this decision, the chairperson shall sign the form designated by the panel stating that the death does not meet the criteria for review. He or she shall forward the form and findings to the panel within seven days of receipt;

(2) If the report indicates the child's death does not meet the criteria for review and the chairperson disagrees with this decision, the chairperson shall follow the procedures for deaths to be reviewed pursuant to subsection (k) of this Code section;

(3) If the report indicates the child's death meets the criteria for review and the chairperson disagrees with this decision, the chairperson shall sign the form designated by the panel stating that the death does not meet the criteria for review. The chairperson shall also attach an explanation for this decision; or

(4) If the report indicates the child's death meets the criteria for review and the chairperson agrees with this decision, the chairperson shall follow the procedures for deaths to be reviewed pursuant to subsection (k) of this Code section.

(k) When a child's death meets the criteria for review, the chairperson shall convene the review committee within 30 days after receipt of the report for a meeting to review and investigate the cause and circumstances of the death. Review committee members shall provide information as specified in this subsection, except where otherwise protected by law:

(1) The providers of medical care and the medical examiner or coroner shall provide pertinent health and medical information regarding a child whose death is being reviewed by the review committee;

(2) State, county, or local government agencies shall provide all of the following data on forms designated by the panel for reporting child fatalities:

(A) Birth information for children who died at less than one year of age, including confidential information collected for medical and health use;

(B) Death information for children who have not reached their eighteenth birthday;

(C) Law enforcement investigative data, medical examiner or coroner investigative data, and parole and probation information and records;

(D) Medical care, including dental, mental, and prenatal health care; and

(E) Pertinent information from any social services agency that provided services to the child or family; and

(3) The review committee may obtain from any superior court judge of the county or circuit for which the review committee was created a subpoena to compel the production of documents or attendance of witnesses when that judge has made a finding that such documents or witnesses are necessary for the review committee's review. Service of, objection to, and enforcement of subpoenas authorized by this Code section shall be governed by the procedures set forth in Chapter 13 of Title 24. However, this Code section shall not modify or impair the privileged communications as provided by law except as otherwise provided in Code Section 19-7-5.

(4) Disclosure of protected health information pursuant to this subsection shall be considered to be for a law enforcement purpose, and the review committee shall be considered to be a law enforcement official within the meaning of the rules and regulations adopted pursuant to the federal Health Insurance Portability and Accountability Act of 1996. Disclosure of confidential or privileged matter to the review committee pursuant to this Code section shall not serve to destroy or in any way abridge the confidential or privileged character thereof, except for the purpose for which such disclosure is made.

(l) The review committee shall complete its review and prepare a report of the child's death within 20 days, weekends and holidays excluded, following the first meeting held after receipt of the county medical examiner or coroner's report. The review committee's report shall:

(1) State the circumstances leading up to death and cause of death;

(2) Detail any agency involvement prior to death, including the beginning and ending dates and kinds of services delivered, the reasons for initial agency activity, and the reasons for any termination of agency activities;

(3) State whether any agency services had been delivered to the family or child prior to the circumstances leading to the child's death;

(4) State whether court intervention had ever been sought;

(5) State whether there have been any acts or reports of violence between past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons living or formerly living in the same household;

(6) Conclude whether services or agency activities delivered prior to death were appropriate and whether the child's death could have been prevented;

(7) Make recommendations for possible prevention of future deaths of similar incidents for children who are at risk for such deaths; and

(8) Include other findings as requested by the panel.

(m) The review committee shall transmit a copy of its report within 15 days of completion to the panel.

(n) The review committee shall transmit a copy of its report within 15 days following its completion to the district attorney of the county or circuit for which the review committee was created if the report concluded that the child named therein died as a result of:

(1) Sudden Infant Death Syndrome when no autopsy was performed to confirm the diagnosis;

(2) Accidental death when it appears that the death could have been prevented through intervention or supervision;

(3) Any sexually transmitted disease;

(4) Medical causes which could have been prevented through intervention by an agency or by seeking medical treatment;

(5) Suicide of a child in custody or known to the Department of Human Services or when the finding of suicide is suspicious;

(6) Suspected or confirmed child abuse;

(7) Trauma to the head or body; or

(8) Homicide.

(o) Each review committee shall issue an annual report no later than the first day of July each year. The report shall:

(1) Specify the numbers of reports received by such review committee from a county medical examiner or coroner pursuant to subsection (h) of this Code section for the preceding calendar year;

(2) Specify the number of reports of child fatality reviews prepared by the review committee during such period;

(3) Be published at least once annually in the legal organ of the county or counties for which the review committee was established with the expense of such publication paid each by such county; and

(4) Be transmitted, no later than the fifteenth day of July each year, to the panel. (Code 1981, § 19-1-3, enacted by Ga. L. 1990, p. 1785, § 1; Code 1981, § 19-15-3, as redesignated by Ga. L. 1991, p. 94, § 19; Ga. L. 1993, p. 1695, § 2; Ga. L. 1993, p. 1941, § 1; Ga. L. 1998, p. 609, § 2; Ga. L. 1999, p. 81, § 19; Ga. L. 2001, p. 1158, § 1; Ga. L. 2003, p. 395, § 1; Ga. L. 2008, p. 166, § 1/HB 1051; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2014, p. 34, § 2-5/SB 365.)

The 2014 amendment, effective July 1, 2014, rewrote this Code section.

Editor's notes. — Ga. L. 2014, p. 34, § 2-1/SB 365, not codified by the General Assembly, provides that: "This part shall be known and may be cited as the 'Journey Ann Cowart Act.'"

Ga. L. 2014, p. 34, § 2-9/SB 365, not codified by the General Assembly, provides that: "It is the intent of the General Assembly to provide for transparency rel-

ative to investigations involving child abuse and child fatalities in order to best protect the children of this state. The General Assembly finds that more disclosure of information may be necessary when a child is deceased. The General Assembly intends that agencies and departments of this state share data in order to conduct research for the purpose of preventing child fatalities in this state."

19-15-4. Georgia Child Fatality Review Panel.

(a) There is created the Georgia Child Fatality Review Panel. The panel shall oversee the local child fatality review process and report to the Governor on the incidence of child deaths with recommendations for prevention.

(b) The director of the Georgia Bureau of Investigation or his or her designee shall coordinate the work of the panel and shall provide such administrative and staff support to the panel as may be necessary to enable the panel to discharge its duties under this chapter. The panel shall be attached to the Division of Forensic Sciences of the Georgia Bureau of Investigation for administrative purposes, and its planning, policy, and budget functions shall be coordinated with those of the Division of Forensic Sciences of the Georgia Bureau of Investigation.

(c) The panel shall be composed as follows:

- (1) One district attorney appointed by the Governor;
- (2) One juvenile court judge appointed by the Governor;

(3) Two citizen members who are not employed by or officers of the state or any political subdivision thereof shall be appointed by the Governor, one of whom shall come from each of the following:

- (A) A state-wide child abuse prevention organization; and

- (B) A state-wide childhood injury prevention organization;
- (4) One forensic pathologist appointed by the Governor;
 - (5) The chairperson of the Board of Human Services;
 - (6) The director of the Division of Family and Children Services of the Department of Human Services;
 - (7) The director of the Georgia Bureau of Investigation;
 - (8) The chairperson of the Criminal Justice Coordinating Council;
 - (9) A member of the Georgia Senate appointed by the Lieutenant Governor;
 - (10) A member of the Georgia House of Representatives appointed by the Speaker of the House of Representatives;
 - (11) A local law enforcement official appointed by the Governor;
 - (12) A superior court judge appointed by the Governor;
 - (13) A coroner appointed by the Governor;
 - (14) The Child Advocate for the Protection of Children;
 - (15) The commissioner of public health;
 - (16) The commissioner of behavioral health and developmental disabilities;
 - (17) A member of the State Board of Education appointed by the Governor; and
 - (18) The commissioner of early care and learning.
- (d) The Governor shall appoint the chairperson of the panel.
- (e)(1) All appointed members shall be appointed for terms of two years beginning on July 1 of the year appointed and shall serve until their respective successors are appointed and qualified.
- (2) All ex officio members shall serve during the time such persons hold the offices or positions specified therein.
- (3) Members of the General Assembly shall serve for terms of office concurrent with their terms of office as members of the General Assembly.
- (4) Vacancies in the membership of the panel so appointed shall be filled in the same manner as the original appointment for the unexpired term of office.
- (f) Members of the panel who are members of the General Assembly shall be compensated for service on the panel from legislative funds in

the manner provided for service on interim study committees. Those members of the panel who are not state officials or employees shall receive from funds appropriated or otherwise available to the panel for their services on the panel the same daily expense and travel or mileage allowance authorized for members of the General Assembly for service on interim study committees. The members of the panel who are state officials or employees shall receive no additional compensation for their service on the panel but may be reimbursed for reasonable and necessary travel expenses which shall be payable from the department or agency of which such member is an employee or officer.

(g) The panel shall meet quarterly to review the reports of local review committees and shall meet when requested to do so by the Governor.

(h) The purpose of the panel is to recommend measures to decrease the incidence of child death by undertaking all of the following duties:

- (1) Identify factors which place a child at risk for death;
- (2) Collect and share information among state agencies which provide services to children and families or investigate child deaths;
- (3) Make suggestions and recommendations to appropriate participating agencies regarding improving coordination of services and investigations;
- (4) Identify trends relevant to unexpected or unexplained child death;
- (5) Investigate the relationship, if any, between child deaths and violence between past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons living or formerly living in the same household;
- (6) Review each report from local child fatality review committees. The chairperson may call a special meeting of the panel to review any report when the chairperson has concluded the report warrants expedited review and has been requested by the submitting local review committee to make such expedited review;
- (7) Provide training and written materials to the local review committees to assist them in carrying out their duties. Such written materials shall include model protocols for the operation of the review committees;
- (8) Develop a protocol for child fatality investigations and revise the protocol as needed;
- (9) Monitor the operations of local review committees to determine training needs and service gaps. If the panel determines that changes

to any statute, regulation, or policy is needed to decrease the risk of child death, it shall propose and recommend such changes in its annual report; and

(10) Develop and implement such procedures and policies as are necessary for its own operation.

(i) By January 1 of each calendar year, the panel shall submit a report to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, the chairperson of the Senate Judiciary Committee, and the chairperson of the House Committee on Judiciary regarding the prevalence and circumstances of child fatalities in this state; shall recommend measures to reduce such fatalities caused by other than natural causes; and shall address in the report the following issues:

- (1) Whether the deaths could have been prevented;
- (2) Whether the children were known to any state or local agency;
- (3) The actions, if any, taken by any state or local agency or court;
- (4) Whether agency or court intervention could have prevented their deaths;
- (5) Whether policy, procedural, regulatory, or statutory changes are called for as a result of these findings; and
- (6) Whether any referral should have been made to a law enforcement agency which was not made.

(j) The panel shall also establish procedures for the conduct of reviews by local review committees into deaths of children and may obtain the assistance of child protection professionals in establishing such procedures.

(k) The panel shall have the authority to obtain from any superior court judge of the county or circuit for which the matter is pending a subpoena to compel the production of documents or attendance of witnesses if the county multiagency child fatality review committee has not exercised its authority to subpoena the documents or witnesses as provided in paragraph (3) of subsection (k) of Code Section 19-15-3; provided, however, if a superior court judge has previously ruled that the records or witnesses are not necessary to the fatality review at issue, such finding shall be conclusive on the issuance of the subpoena. (Code 1981, § 19-1-4, enacted by Ga. L. 1990, p. 1785, § 1; Code 1981, § 19-15-4, as redesignated by Ga. L. 1991, p. 94, § 19; Ga. L. 1993, p. 1695, § 2; Ga. L. 1993, p. 1941, § 1; Ga. L. 1996, p. 803, § 1; Ga. L. 1998, p. 609, § 3; Ga. L. 1999, p. 81, § 19; Ga. L. 2000, p. 243, § 2; Ga. L. 2001, p. 1158, § 1; Ga. L. 2003, p. 395, § 2; Ga. L. 2008, p. 166, § 2/HB 1051; Ga. L. 2008, p. 568, § 8/HB 1054; Ga. L. 2009, p. 453,

§ 1-19/HB 228; Ga. L. 2011, p. 705, § 5-4/HB 214; Ga. L. 2014, p. 34, § 2-6/SB 365.)

The 2011 amendment, effective July 1, 2011, substituted “The commissioner of public health” for “The director of the Division of Public Health of the Department of Community Health” in paragraph (c)(15).

The 2014 amendment, effective July 1, 2014, rewrote this Code section.

Editor’s notes. — Ga. L. 2014, p. 34, § 2-1/SB 365, not codified by the General Assembly, provides that: “This part shall be known and may be cited as the ‘Journey Ann Cowart Act.’”

Ga. L. 2014, p. 34, § 2-9/SB 365, not

codified by the General Assembly, provides that: “It is the intent of the General Assembly to provide for transparency relative to investigations involving child abuse and child fatalities in order to best protect the children of this state. The General Assembly finds that more disclosure of information may be necessary when a child is deceased. The General Assembly intends that agencies and departments of this state share data in order to conduct research for the purpose of preventing child fatalities in this state.”

19-15-6. Use of information and records of protocol committees, review committees, and panels.

(a) Records and other documents which are made public records pursuant to any other provisions of law shall remain public records notwithstanding their being obtained, considered, or both, by a protocol committee, a review committee, or the panel.

(b) Notwithstanding any other provision of law to the contrary, reports of a review committee made pursuant to Code Section 19-15-3 and reports of the panel made pursuant to Code Section 19-15-4 shall be public records and shall be released to any person making a request therefor, but the protocol committee, review committee, or panel having possession of such records or reports shall only release them after expunging therefrom all information contained therein which would permit identifying the deceased or abused child, any family member of the child, any alleged or suspected perpetrator of abuse upon the child, or any reporter of suspected child abuse.

(c) Statistical compilations of data by a review committee or the panel based upon information received thereby and containing no information which would permit the identification of any person shall be public records.

(d) Members of a protocol committee, a review committee, or of the panel shall not disclose what transpires at any meeting other than one made public by Code Section 19-15-5 nor disclose any information the disclosure of which is prohibited by this Code section, except to carry out the purposes of this chapter. Any person who knowingly violates this subsection shall be guilty of a misdemeanor.

(e) A person who presents information to a protocol committee, a review committee, or the panel or who is a member of any such body

shall not be questioned in any civil or criminal proceeding regarding such presentation or regarding opinions formed by or confidential information obtained by such person as a result of serving as a member of any such body. This subsection shall not be construed to prohibit any person from testifying regarding information obtained independently of a protocol committee, a review committee, or the panel. In any proceeding in which testimony of such a member is offered the court shall first determine the source of such witness's knowledge.

(f) Except as otherwise provided in this Code section, information acquired by and records of a protocol committee, a review committee, or the panel shall be confidential, shall not be disclosed, and shall not be subject to Article 4 of Chapter 18 of Title 50, relating to open records, or subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding.

(g) A member of a protocol committee, a review committee, or the panel shall not be civilly liable or subject to criminal prosecution for any disclosure of information made by such member as authorized by this Code section.

(h) Members of the review committee, persons attending a review committee meeting, and persons who present information to a review committee may release information to such government agencies as is necessary for the purpose of carrying out assigned review committee duties.

(i) Notwithstanding any other provisions of law, information acquired by and documents, records, and reports of the panel and protocol committees and review committees applicable to a child who at the time of his or her death was in the custody of a state department or agency or foster parent shall not be confidential and shall be subject to Article 4 of Chapter 18 of Title 50, relating to open records. (Code 1981, § 19-1-6, enacted by Ga. L. 1990, p. 1785, § 1; Code 1981, § 19-15-6, as redesignated by Ga. L. 1991, p. 94, § 19; Ga. L. 1993, p. 1695, § 2; Ga. L. 1993, p. 1941, § 1; Ga. L. 1998, p. 609, § 4; Ga. L. 2001, p. 1158, § 1; Ga. L. 2014, p. 34, § 2-7/SB 365.)

The 2014 amendment, effective July 1, 2014, substituted “therefor, but the protocol committee, review committee, or panel” for “therefor but the panel protocol committee review committee” in the middle of subsection (b); substituted “liable or subject to criminal prosecution” for “or criminally liable” in the middle of subsection (g); and deleted “child abuse” preceding “protocol committees” near the beginning of subsection (i).

Editor’s notes. — Ga. L. 2014, p. 34,

§ 2-1/SB 365, not codified by the General Assembly, provides that: “This part shall be known and may be cited as the ‘Journey Ann Cowart Act.’”

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